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No. 82-695

IN THE

Supreme Court of the United States

October Term, 1982

FRANCHISE TAX BOARD OF THE STATE OF CALIFORNIA,
Appellant,

vs.

CONSTRUCTION LABORERS VACATION TRUST FOR SOUTHERN CALIFORNIA, *et al.*,
Appellees.

Appeal from the United States Court of Appeals for the Ninth Circuit.

JOINT APPENDIX.

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Appeal Docketed October 18, 1982.
Jurisdiction Postponed December 13, 1982.

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The following opinions, decisions, judgments, and orders have been omitted in printing this appendix because they appear on the following pages in the appendix to the printed Jurisdictional Statement.

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United States District Court
Central District of California.
Civil Docket.

DATE	NR.	PROCEEDINGS
6-25-80	yd	1. Fld Petn for Removal w/cc Cmplt & Summs.
	yd	2. Fld Bond for undertkng on removal fr Highlands Insurance Co., $500.00, bond #813511
6/26/80	rz	3. Fld notc to cnsl
7-9-80	sb	4. Fld deft's notc of motn to dism memo of P/A in suppt thereof
7-16-80	cg	5. Fld pltfs opp of Franchise Tax Board of the State of Calif. to mot to dism
7-24-80	cg	6 Fld defts reply memo of P/A in suppt of mot to dism
7-30-80	cg	7. Fld Stip & ORD to cont the hrg on mot to dism to 9-15-80 at 10 am
9/5/80	jcd	8. Fld Pltf's suppl oppos to motn to dsms.
9/8/80	jcd	9. Fld Stip and ORD cont'g motn to dsms to 10/6/80, 10 a.m. (NFC)
9/18/80	rz	10. Fld pltf notc of mot & mot fr rem & memo of P/A in suppt thereof retnbl 10/6/80, 10 AM
9/29/80	jcd	11. Fld Plft's exhbt to supplemental oppos of Franchise Tax Board of the State of Calif to motn to dsms.
*9/26/80	jcd	12. Fld Petnrs/defts memo of p/a in oppos to motn to remand.
10/1/80	jcd	13. Fld Pltf's reply memo of p/a in suppt of motn to remand.
10-6-80	cg	14. MIN ORD: crt ords plfs mot for remand denied, pltf mot to dism is cont to 10-20-80 10 am & x-mots for S/J to be hrd on 10-20-80 10 am
10-10-80	cg	LODGED-defts ord denying mot to remand
10-16-80	cg	15. Fld ORD denying mot to Remand to the Superior Court of the State of Calif. (Ent 10-17-80) mld cpys & notcs
*10-15-80	md	16. Fld pltf P&A of Franchise Tax Bd in suppt of S/J
10-20-80	cg	17. MIN ORD: cnsl stip tht mattr may be hrd on x-mots for S/J, hrg hld & crt ords pltfs mot grntd & defts mot for S/J denied, defts mot to dism is denied

DATE	NR.	PROCEEDINGS
10-21-80	cg	18. Fld defts req for findings of fact & concl of law
10-31-80	cg	LODGED-defts prop findgs of fact & concl of law
11-6-80	cg	LODGED-pltfs judgmt LODGED-pltfs prop findngs of fact & concl of law
11-12-80	cg	19. Fld objts to deft Construc Laborers Vacation Trust for So. Calif. to prop findngs of fact & concl of law submt by pltf Franchise Tax board of the stat of calif.
12-3-80	cg	20. Fld Findngs of Fact & Concl of Law as stated w/ in this doc (Ent 12-4-80) cpy to pltf & notcs 21. Fld Judgmt & ORD tht pltfs mot for S/J is grntd, pltf is awarded judgmt against deft inthe amnt of $395.49 as of 11-5-80 w/intrst of $0.083 per dy accruing as of 11-6-80. deft is legally obligated to honor levies by thepltfs upon deft in collection of tax delinquiencies of the beneficiaries of deft Trust Fund (Ent 12-4-80) MD JS -6 cpy to pltf & mld notcs
12-16-80	lw	22. Fld defts' NOTC OF APPEAL frm Jdgmt ent 12-4-80 $70.00 fldng docket fees pd.
12-23-80	cg	23. Fld defts notc of non-designation of rpts rranspt
4-20-81	yd	24. Fld petrs/defts designatn of Clerk's record on appeal
8-24-81	sb	25. Fld pltf-appellee notc of non designation of reporter transcript
	sb	26. Fld notc of non designation of additional clerk record on appeal pltf-appellee
8/9/82	gth	27. Fld notc of hrg on flng & spreading jdmt of C/A cvl retnbl 8/23/82 10 am
8/2/82	gth	Lodged copy of judmt from C/A 9th circuit vacating jdmt & rem. Each party to bear its own costs
8/20/82	gth	28. Fld stip & ORD(R) that the hrg on filng & spreadng jdmt of Crt of Appls be cont to 9/27/82 at 10 am
10/4/82	gth	29. MIN ORD: Crt ORDS jdmt of USCA, 9th Cir vacatng & rem jdmt fld & spread (ENT 10/6/82) Crt rules that jdmt is in favr of Constructn Laborers Vacatn Trust for Southern Calif as prayd & each party is to pay their own costs

Complaint for Failure to Honor Garnishment and for Declaratory Relief.

Superior Court of the State of California for the County of Los Angeles.

Franchise Tax Board of the State of California, Plaintiff, v. Construction Laborers Vacation Trust for Southern California, Edward Ashton, Al Atwood, Gary Bronneck, John Clarke, R. C. Gallyon, Richard Greenberg, Roger Jaska, William Middleton, Louie Bravo, Benjamin T. James, George Mattocks, William R. McClain, Nick Orsura, Joe Rivera, Ray M. Wilson, James Keyes, as trustees and on behalf of Construction Laborers Vacation Trust For Southern California, DOES I to XXX, inclusive, Defendants. No. C326040.

Filed: June 13, 1980.

COMES NOW, the People of the State of California, acting by and through the Franchise Tax Board of the State of California (hereinafter referred to as "the Board"), and for a first cause of action alleges as follows:

FIRST CAUSE OF ACTION

1. The Board is the duly constituted agency of the State of California charged with the enforcement of the Personal Income Tax Law of the State of California and is authorized pursuant to California Revenue and Taxation Code section 18817 to issue Notices to Withhold to enforce collection of unpaid tax liabilities.

2. The Board is informed and believes and on that ground alleges that at all times relevant hereto, defendant, Construction Laborers Vacation Trust for Southern California (hereinafter "Defendant Trust Fund"), is and was at all times mentioned herein, an express trust established on April 14, 1966, by written agreement and Declaration

of Trust, a copy of which is attached hereto as Exhibit "A" and incorporated herein.

3. Plaintiff is informed and believes and on that ground alleges that defendant Trust Fund's existence has been and now is dependent upon the said Agreement and Declaration of Trust and that its principal place of business is in the County of Los Angeles, State of California.

4. The Board is informed and believes and on that ground alleges that at all times relevant hereto, defendants Edward Ashton, Al Atwood, Gary Bronneck, John Clarke, R. C. Gallyon, Richard Greenberg, Roger Jaska, William Middleton, Louie Bravo, Benjamin T. James, George Mattocks, William R. McClain, Nick Orsura, Joe Rivera, Ray M. Wilson and James Keyes, have been duly appointed and acting trustee of the aforesaid Construction Laborers Vacation Trust for Southern California.

5. That the true names of defendants Doe I to Doe XXX inclusive are unknown to plaintiff and plaintiff will ask leave of this court to amend this complaint when their true names and capacities have been ascertained.

6. Jesse Murphy (hereinafter "Murphy"), while a resident of the State of California during the tax year ending December 1976, incurred personal income tax liability to the State of California under the Personal Income Tax Law of the State of California and the following amounts remain due, owing and unpaid:

Year	Tax	Interest	Penalties	Total
December 1976	$37.00	$11.70	-0-	$48.70

Further interest accrues on the total amount of tax and interest bearing penalties from May 31, 1980 at $0.012 per day. A copy of the Certificate of Delinquency setting forth the above amount of indebtedness is attached hereto as Ex-

hibit "B" and is incorporated herein by this reference as if set forth in full.

7. On or about September 20, 1978, the Board issued a Notice to Withhold to defendants pursuant to California Revenue and Taxation Code section 18817. Said Notice to Withhold enumerated the tax indebtedness of Murphy as described in paragraph 6 herein and directed that pursuant to California Revenue and Taxation Code section 18817, defendants withhold and transmit to the Board any credits or other personal property or other things of value in defendants' possession or under their its control belonging to said tax debtor Murphy.

8. On or about March 14, 1979, defendants informed the Board that they would not disburse the funds levied upon to either Murphy or to the Board pending the receipt of an opinion letter from the Administrator, Pension and Welfare Benefit Programs, United States Department of Labor as to whether defendants are permitted to honor said liens under the provisions of the Employee Retirement Income Security Act of 1974 (hereinafter "ERISA"). A copy of said letter is attached hereto as Exhibit "C" and is incorporated herein by reference as if set forth in full.

9. Eriberto G. Salcedo (hereinafter "Salcedo"), while a resident of the State of California during the tax years ending December 1975 and December 1976, incurred personal income tax liability to the State of California under the Personal Income Tax Law of the State of California and the following amounts remain due, owing and unpaid.

Year	Tax	Interest	Penalties	Payments	Total
Dec. 1975	$232.00	$67.38	$58.00	$189.00	$168.38
Dec. 1976	30.00	8.57	0.00	0.00	38.57

Further interest accrues on the total amount of tax and interest bearing penalties from May 31, 1980 at $0.043 per

day. A copy of the Certificate of Delinquency setting forth the above amount of indebtedness is attached hereto as Exhibit "D" and is incorporated herein by this reference as if set forth in full.

10. On or about September 20, 1977 and/or April 20, 1978, the Board issued a Notice to Withhold to defendants pursuant to California Revenue and Taxation Code section 18817. Said Notice to Withhold enumerated the tax indebtedness of Salcedo as described in paragraph 9 herein and directed that pursuant to California Revenue and Taxation Code section 18817 defendants withhold and transmit to the Board any credits or other personal property or other things of value in defendant's possession or under their its control belonging to said tax debtor Salcedo.

11. On or about January 18, 1978, defendants informed the Board that they would not disburse the funds levied upon to either Salcedo or to the Board pending the receipt of an opinion letter from the Administrator, Pension and Welfare Benefit Programs, United States Department of Labor as to whether defendants are permitted to honor said liens under the provisions of the Employee Retirement Income Security Act of 1974 (hereinafter "ERISA"). A copy of said letter is attached hereto as Exhibit "E" and is incorporated herein by reference as if set forth in full.

12. Vincent Zarate (hereinafter "Zarate"), while a resident of the State of California during the tax year ending December 1977, incurred personal income tax liability to the State of California under the Personal Income Tax Law of the State of California and the following amounts remain due, owing and unpaid.

Year	Tax	Interest	Penalties	Payments	Total
Dec. 1977	$586.00	$24.59	$28.32	$514.00	$124.91

Additional penalty on the total unpaid tax accrues from May

31, 1980, at $0.012 per day until April 15, 1981. Additional interest on the total unpaid tax and interest bearing penalties accrues from May 31, 1980, at $0.028 per day. A copy of the Certificate of Delinquency setting forth the above amount of indebtedness is attached hereto as Exhibit "F" and is incorporated herein by this reference as if set forth in full.

13. On or about September 20, 1978, the Board issued a Notice to Withhold to defendants pursuant to California Revenue and Taxation Code section 18817. Said Notice to Withhold enumerated the tax indebtedness of Zarate as described in paragraph 12 herein and directed that pursuant to California Revenue and Taxation Code section 18817 defendants withhold and transmit to the Board any credits or other personal property or other things of value in defendants' possession or under their its control belonging to said tax debtor Zarate.

14. On or about March 14, 1979, defendants informed the Board that they would not disburse the funds levied upon to either Zarate or to the Board pending the receipt of an opinion letter from the Administrator, Pension and Welfare Benefit Programs, United States Department of Labor as to whether defendants are permitted to honor said liens under the provisions of the Employee Retirement Income Security Act of 1974 (hereinafter "ERISA"). A copy of said letter is attached hereto as Exhibit "G" and is incorporated herein by reference as if set forth in full.

15. On or about January 7, 1980, defendants notified the Board that the defendants would not honor the levies made upon them by the State of California pursuant to an Advisory Opinion from the United States Department of Labor. A copy of said notification and its exhibit, the Advisory Opinion are attached hereto as Exhibit "H" and are incorporated herein by reference as if set forth in full.

16. The Board is informed and believes and on that ground alleges that at the time of the service of the Notice to Withhold referred to in paragraphs 7, 10, and 13 of this complaint, there existed in the said defendant Trust Fund monetary accruals in favor of Murphy, Salcedo and Zarate, which said defendants wrongfully failed and refused to pay over to the Board pursuant to said Notice to Withhold. The Board does not know the exact amount of the said accruals at this time and prays leave to amend this complaint to allege said amount when it has been ascertained through discovery.

17. By reason of the aforesaid failure and refusal of said defendants, the Board has been damaged in a sum equal to the then existing accruals in favor of Murphy, Salcedo and Zarate not to exceed $380.56 plus interest from June 1, 1980.

SECOND CAUSE OF ACTION

18. The Board hereby incorporates by reference all the allegations contained in paragraphs 1 through 17 of the First Cause of action.

19. There was at the time of the levies alleged above and continues to be an actual controversy between the parties concerning their respective legal rights and duties. The Board contends that defendants are obligated and required by law to pay over to the Board all amounts held in the Construction Laborers Vacation Trust for Southern California in favor of the Board's delinquent taxpayers. On the other hand, defendants contend that section 514 of ERISA preempts state law and that the trustees lack the power to honor the levies made upon them by the State of California.

20. The above described dispute between the parties has continued from the dates of the service of the Notice of Withhold alleged above and will continue into future

years in that the Board will continue to attempt levy and garnishment of the defendant Trust Fund for the collection of the tax obligations of defendant's tax debtor beneficiaries and defendants will continue to refuse to honor the Board's levies in this regard. Accordingly, a declaration by this court of the parties' respective rights is required to fully and finally resolve this controversy.

WHEREFORE, plaintiff prays judgment as follows:

1. That defendants wrongfully failed and refused to honor the levies of the Board upon defendant Trust Fund in collection of the tax indebtedness of beneficiaries Murphy, Salcedo and Zarate;

2. That the Board has been damaged as a direct and proximate result of defendants' wrongful failure and refusal to honor the Board's levy and garnishment and that the amount of said damage is equal to the accruals existing in favor of Murphy, Salcedo and Zarate, at the time of said levy plus interest;

3. That the Board be awarded judgment against defendants in a sum equal to the amount of said accruals as hereafter determined to exist through discovery;

4. That the court declare defendants legally obligated to honor all future levies by the Board upon defendant Trust Fund in collection of tax delinquencies of the beneficiaries of defendant Trust Fund;

5. That plaintiff be awarded costs of suit herein and such other relief as this court deem just and proper.

GEORGE DEUKMEJIAN, Attorney General
EDMOND B. MAMER,
PATTI S. KITCHING,
Deputy Attorneys General
By /s/ Patti S. Kitching
PATTI S. KITCHING
Attorneys for Plaintiff

EXHIBIT "A".

The Construction Laborers Vacation Trust
for Southern California.

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AGREEMENT AND DECLARATION OF TRUST ESTABLISHING THE CONSTRUCTION LABORERS VACATION TRUST FOR SOUTHERN CALIFORNIA

ARTICLE I—PARTIES TO AGREEMENT

This Agreement and Declaration of Trust is made and entered into in the County of Los Angeles, State of California, upon the considerations hereinafter set forth, by and between the following parties:

1.01 Associations:

(a) Southern California Chapter of the Associated General Contractors of America.

(b) Home Builders Association of Los Angeles, Orange and Ventura Counties, successor to Home Builders Institute, Inc.

(c) Engineering and Grading Contractors' Association of California, Inc.

(d) Building Contractors' Association of California Inc.

1.02 Union:

Southern California District Council of Laborers for and on behalf of the District Council and its affiliated Local Unions of the International Hod Carriers, Building and Common Laborers' Union of America, A.F.L.-C.I.O. Subsequent to the execution of the Collective Bargaining Agreement, described in Section 3.01(a), International Hod Carriers, Building and Common Laborers' Union of America changed its name to "Laborers' International Union of North America." Any reference herein to "International

Hod Carriers, Building and Common Laborers' Union of America" shall be deemed to likewise refer to "Laborers' International Union of North America."

1.03 Original Trustees:

(a) Union Trustees:
James V. Flores
Ray Waters
Ray Mendoza
Joseph Y. Murdock
Ray M. Wilson
Don E. Graves
Nick Orsua
S. J. Hibbler

(b) Employer Trustees:
James H. Crowell
Herb W. Smith
R. C. Gallyon
Peter E. Johnson
Reed Sprinkel
E. M. Barker
R. A. Alsweet
Syd Carnine

ARTICLE II—REASONS FOR AGREEMENT

2.01 The Union and the Associations have entered into collective bargaining agreements which provide, among other things, for the establishment of a fund for the payment of paid vacations.

2.02 The Union and the Associations desire to establish a Vacation Fund as a Trust Fund for receiving contributions and to provide vacation benefits for eligible employees.

2.03 The Union and the Associations desire to set forth the terms and conditions under which the said Fund is to be established and administered; and to set forth the power and duties of the Trustees and nature of the benefits to be provided; and to set forth their agreement respecting such other matters as are pertinent to the Vacation Fund.

ARTICLE III—DEFINITIONS

Unless the context or subject matter otherwise requires, the following definitions shall govern in this Agreement:

3.01 The term "Collective Bargaining Agreements" includes:

(a) The so-called Laborers Southern California Master-Labor Agreement dated June 1, 1965, between the Associations and the Union, and the amendments thereto.

(b) Any other collective bargaining agreements between the International Hod Carriers, Building and Common Laborers Union, District Council or its Local Union affiliates and any individual employer or employer association which provide for the making of employer contributions to this Fund, subject to approval of the Board of Trustees as herein provided.

(c) Any extensions, amendments, modifications or renewals of any of the above described agreements, or any substitute or successor agreements to them which provide for the making of employer contributions to this Fund.

3.02 The term "Individual Employer" means any individual employer (including any individual, partnership, corporation, contractor, joint venture or other entity) who is required by any of the Collective Bargaining Agreements to make contributions to the Vacation Fund or who in fact makes one or more contributions to the Fund.

3.03 The term "Employee" means any employee of an individual employer who performs one or more hours of work covered by any of the Collective Bargaining Agreements. Individual employers who are self-employed, whether operating as sole proprietorships or partnerships, are not eligible to be and shall not be included as participants or beneficiaries of this Plan.

3.04 The term "Union" or "District Council" means the Southern California District Council of Laborers.

3.05 The term "Local Union" means any local union of the International Hod Carriers, Building and Common Laborers Union of America, A.F.L.-C.I.O. in the following Southern California Counties: Imperial, Inyo, Kern, Los

Angeles, Mono, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara and Ventura.

3.06 The term "Trustee" means any natural person designated as Trustee pursuant to ARTICLE V hereof. "Employer Trustees" are the original eight Trustees appointed by the Associations, and their successors. "Union Trustees" are the original eight Trustees appointed by the Union, and their successors.

3.07 The terms "Board of Trustees" or "Board" mean the Board of Trustees established by this Trust Agreement.

3.08 The terms "Vacation Fund" or "Fund" mean the trust fund created and established by this Trust Agreement.

3.09 The terms "Vacation Plan" or "Plan" mean any Vacation Plan created pursuant to the Collective Bargaining Agreements and this Trust Agreement and any modification, amendment, extension or renewal of said Plan.

3.10 The term "Trust Agreement" or "Agreement and Declaration of Trust" means this agreement and any modification, amendment, extension or renewal thereof.

3.11 The term "Contribution" means the payment made or to be made to the Fund by any individual employer under the provisions of any of the Collective Bargaining Agreements.

ARTICLE IV—CREATION OF TRUST

4.01 There is hereby created the Construction Laborers Vacation Trust for Southern California, which shall consist of all contributions required by the Collective Bargaining Agreements to be made for the establishment and maintenance of the Plan, and all interest, income and other returns thereon of any kind whatsoever, and any other property received or held by reason of or pursuant to this Trust.

4.02 The Fund shall have its principal office in the County of Los Angeles, State of California.

4.03 No employee or beneficiary shall be entitled to receive any part of the contributions made or required to be made to the Fund except as provided by the Plan.

4.04 The Board of Trustees shall have the continuing supervision, control and direction of the Fund for the uses, purposes and duties set forth in this Trust Agreement and be vested with all right, title and interest to it except as the right to certain monies may vest in employees, as more particularly hereinafter set forth. The Fund shall be administered by the Board of Trustees for the exclusive benefit of employees and the beneficiaries of such employees. Notwithstanding anything to the contrary contained in this Trust Agreement or in the Plan, any modification, amendment, extension or renewal hereof or of the Plan, no portion of the Fund shall at any time revert to, or be recoverable by, any of the Associations, any individual employer, the Union, or any Local Union, or be used for, or diverted to, purposes other than for the exclusive benefit of employees or their beneficiaries under the Plan, and the payment of the administrative expenses of the Fund and the Plan, or refund of erroneous payments.

4.05 Neither the Associations, any individual employer, the Union, any Local Union, any employee, nor beneficiary under the Plan nor any other person shall have any right, title or interest in or to the Fund other than as specifically provided in this Trust Agreement. Neither the Fund nor any contributions to the Fund shall be in any manner liable for or subject to the debts, contracts or liabilities of any of the Associations, any individual employer, the Union, any Local Union, or any employee or beneficiary.

4.06 Each employee or beneficiary under the Plan is hereby restrained from selling, transferring, anticipating, assigning, hypothecating or or otherwise disposing of his benefits hereunder or any other right or interest under the Plan, and the Board of Trustees shall not recognize, or be required to recognize, any such sale, transfer, anticipation, assignment, hypothecation or other disposition. Any such benefit, right or interest shall not be subject in any manner to voluntary transfer or transfer by operation of law or otherwise, and shall be exempt from the claims of creditors or other claimants and from all orders, decrees, garnishments, executions or other legal or equitable process or proceedings to the fullest extent permissible by law.

4.07 Neither the Association nor any officer, agent, employee or committee member of the Associations shall be liable to make contributions to the Fund or be under any other liability to the Fund or with respect to the Plan, except to the extent that he or it may be an individual employer required to make contributions to the Fund with respect to his or its own individual or joint venture operations, or to the extent he may incur liability as a Trustee as hereinafter provided. The liability of any individual employer to the Fund, or with respect to the Plan, shall be limited to the payments required by the Collective Bargaining Agreements with respect to his or its individual or joint venture operations, and in no event shall be or it be liable or responsible for any portion of the contributions due from other individual employers with respect to the operations of such individual employers. The individual employers shall not be required to make any further payments or contributions to the cost of operation of the Fund or of the Plan, except as may be hereafter provided in the Collective Bargaining Agreements.

4.08 Neither the Associations, any individual employer, the Union, any Local Union, nor any employee shall

be liable or responsible for any debts, liabilities or obligations of the Fund or the Trustees.

4.09 Neither the Union, Local Unions, Associations nor the individual employers, nor the Trustees, nor any officer, agent nor member of any of them, shall be personally liable for the benefits provided under this Agreement; and all such benefits shall be payable and/or collectible only out of the assets of the Fund. An employee whose claim has been denied, in whole or in part, must look exclusively to the Trust Fund for satisfaction of his claim and may not bring legal action against any other person, firm or corporation.

ARTICLE V—TRUSTEES

5.01 The Fund and Plan shall be administered by a Board of Trustees consisting of sixteen Trustees, eight of whom shall be designated "Employer Trustees" and eight of whom shall be designated "Union Trustees."

5.02 The Employer Trustees shall be appointed in writing by the Associations, which Associations are irrevocably designated by each individual employer as his or its attorneys-in-fact for the purpose of appointing and removing Trustees and successor Trustees.

5.03 The Union Trustees shall be appointed by majority vote of those delegates to the District Council who represent Local Unions which are affiliated with the District Council and which have collective bargaining agreements with individual employers, which agreements provide for the making of employer contributions to this Fund; and the Trustees so appointed shall be selected from the said delegates representing said participating Local Unions on the District Council. Each Union, present or future party to this agreement, whether or not a member of the District Council, hereby irrevocably designates such delegates to the District Council as its attorneys-in-fact for the purpose of appointing

and removing Trustees and successor Trustees. Notification of any such appointment shall be given in writing to the Trustees by the District Council; and the Trustees may accept such notification as official and may rely thereon without inquiring as to compliance with the foregoing provisions.

5.04 The names of the original Trustees are set forth in ARTICLE I of this Agreement, and the signatures of such Trustees to this Trust Agreement shall constitute their acceptance of office and agreement to act under and be subject to all of the terms and conditions of this Agreement.

5.05 Successor Trustees appointed pursuant hereto likewise shall sign this Trust Agreement, or a counterpart thereof, and such signature shall constitute their acceptance of the office and agreement to act under and be subject to all of the terms and conditions of this Trust Agreement.

5.06 Each original Trustee, and each successor Trustee, shall serve until his death, incapacity, resignation or removal, as herein provided. Any retiring Trustee shall forthwith turn over to the remaining Trustees any and all records, books, documents, monies and other property in his possession owned by the Trust or incident to the administration of the Trust.

5.07 Any Employer Trustee may be removed at will, with or without cause, by the Associations. Any Union Trustee may be removed at will, with or without cause, by majority vote of those delegates to the District Council who are vested with the authority of appointment.

If a Trustee shall be absent from two consecutive trustee meetings, the Board of Trustees shall have the right, but shall not be required, to request the removal of such Trustee. In such event, such Trustee shall be removed by the party

vested with power of removal and a successor Trustee appointed.

Removal of a Trustee shall be made in writing in the same manner as an appointment of a Trustee.

5.08 A Trustee may resign and become and remain fully discharged from further duty or responsibility hereunder upon giving thirty (30) days' written notice to the remaining Trustees and to the party which shall have appointed or selected such Trustee.

5.09 Whenever a vacancy shall occur in the Board of Trustees, whether by death, removal, resignation or otherwise, the party by whom such vacancy was originally filled shall forthwith designate a successor Trustee. Appointment of a successor Trustee shall be evidenced in the same manner as appointment of original Trustee. Any successor Trustee appointed by and in accordance with the foregoing provisions shall be vested with all rights, power and duties of a Trustee hereunder with like effect as if originally named as a Trustee in this instrument. The powers of the remaining Trustees to act as herein provided shall not be impaired or limited in any way pending the designation of a successor Trustee to fill any vacancy.

5.10 The procedures through which the Employer Trustees are to be appointed, removed or replaced by the Association are to be determined exclusively by such Associations. If such procedures provide for the appointment, removal or replacement of one or more Trustees by a particular Association or group thereof, the Fund shall be advised in writing by the Associations as to which of the Associations has such right as to which Employer Trustee. Should any such particular Association no longer be a party to this Trust and to the Collective Bargaining Agreements, then the remaining Associations shall advise the Fund in

writing which of the remaining Associations then has such right as to which Trustee.

5.11 The officers of the Board of Trustees shall be a Chairman and a Secretary-Treasurer, selected by the Trustees from among themselves. One officer shall be an Employer Trustee and the other officer shall be a Union Trustee. Term of office shall be for a period of one year, except that the term of the first offices shall expire on June 30, 1966. Offices shall alternate as between Employer and Union Trustees: that is, if the first Chairman shall be an Employer Trustee, the next Chairman shall be a Union Trustee, etc.

*5.12 The Chairman shall be responsible for the conduct of the meeting. The Secretary-Treasurer shall keep minutes or records of all meetings, proceedings and acts of the Trustees, and shall make same available to all Trustees. The Chairman and Secretary-Treasurer shall jointly execute written instruments authorized by the Trustees, and shall jointly sign checks drawn on the Fund. However, the Board of Trustees may designate an alternate for the Chairman and an alternate for the Secretary-Treasurer, which alternate shall be chosen from the same Trustee group as the officer for whom he serves as alternate. In the event of the absence or disability of such officer, instruments and checks may be signed by his alternate.

Notwithstanding the foregoing, the Trustees may authorize the signing of the vacation benefit checks issued pursuant to Article IX by use of a facsimile plate bearing the signatures of the officers otherwise authorized to execute checks drawn on the fund, subject to such limitation on the amount of individual checks as the Trustees may, from time to time, determine by resolution. The Administrator shall

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*Amended June 30, 1966.

furnish the bank on which such checks are drawn, with a copy of any such resolution which shall be deemed sufficient authorization for the bank to accept and honor vacation benefit checks signed by such facsimile plate. This authority for the use of facsimile signatures is expressly restricted to said vacation benefit checks and shall not apply to other checks issued by the Board of Trustees.

5.13 Five Trustees, present in person at any meeting, shall constitute a quorum for the transaction of business, provided that not less than two Employer Trustees and not less than two Union Trustees shall be present.

5.14 (a) An annual meeting shall be held each year for the purpose of electing officers for the ensuing year. Date of annual meeting shall be fixed by resolution of the Board of Trustees.

(b) Regular or periodic meetings may be held at such time or times as may be established by resolution of the Trustees.

(c) Special meetings may be called by the Chairman or Secretary-Treasurer or by any two other Trustees, by giving to each Trustee at least five (5) days' written notice of the time and place of such meeting; or may be held without notice if all Trustees consent in writing.

(d) All meetings shall be held in Los Angeles County, California, at such place as shall be designated by resolution of the Trustees.

5.15 Unless otherwise provided in this Agreement, all decisions of the Trustees shall be made by the majority vote of the Trustees present at the meeting at which such vote is taken. However, Employer Trustees and Union Trustees shall have the right to cast an equal number of votes, to wit, eight votes for Employer Trustees and eight votes for Union Trustees, whether or not an equal number of Employer

Trustees and Union Trustees are present. In the event the number of Employer Trustees or Union Trustees present at the meeting are less than eight, each Trustee shall be vested with additional voting power in an amount sufficient to give to the group a total voting power of eight votes. For example, by way of illustration, if there are present at a meeting four Union Trustees and six Employer Trustees, there will nevertheless be a total voting power of sixteen votes, eight of which shall be vested in the Union Trustees, two votes each; and eight of which shall be vested in the Employer Trustees, one and one-third votes each.

5.16 Action by the Trustees may also be taken by them without a meeting provided that such action is evidenced by an instrument in writing to which all of the Trustees shall consent by unanimous written concurrence.

5.17 Action in Event of Deadlock:

(a) In the event the Trustees cannot act with respect to any question or resolution presented to the Trustees for their decision because of a tie vote, then an impartial umpire to cast the deciding vote shall, if possible, be chosen forthwith by the Trustees. If such Trustees cannot at such time choose an impartial umpire, then the Chairman and the Secretary shall attempt to select such impartial umpire, and if such Chairman and Secretary cannot agree on an impartial umpire within seventy-two (72) hours after the adjournment of the meeting at which the tie vote occurred, then either group of Trustees may write to or petition the District Court of the United States, of the Southern District of California, Central Division, for the appointment of such an impartial umpire.

(b) Upon the impartial umpire being so chosen or appointed, a meeting of the Trustees shall be held as soon as practicable, which shall be attended by such umpire, and

he shall at such time hear any evidence or arguments presented by either group of Trustees upon the question or resolution upon which the tie vote has occurred, and such umpire may, if he desires, make any inquiries from the Trustees with respect to any information deemed by him to be competent, relevant, or material to the question, and if such information is not then available, it shall be furnished to such umpire, by the Chairman and the Secretary jointly, as soon as practicable. Such impartial umpire shall then as soon as practicable, and in any case, within fourteen (14) days after the meeting at which such umpire shall have been present and heard the evidence and arguments, by written instrument cast his vote for or against the question or resolution upon which the tie has occurred. Such umpire shall specify in writing his reasons for casting such vote. A copy of such written vote of the umpire shall be delivered by him to the Chairman and to the Secretary of the Trustees. The decision of the impartial umpire shall be final and binding upon the Trustees, the parties and the beneficiaries of this Agreement and the Plan.

(c) The cost and expense incidental to any appointment of an umpire, and the holding of proceedings before him including the fee, if any, for such umpire, shall be a proper charge against the Fund, and the Trustees are authorized and directed to pay such charges, except that each party shall pay any expenses incurred by it for attorneys' fees, consultants, witnesses, traveling to and from the hearing and all similar personal expenses.

(d) No matter in connection with the interpretation or enforcement of any collective bargaining agreement shall be subject to arbitration under this section.

5.18 The Board of Trustees may reimburse a Trustee with respect to expenses incurred by him in connection with the activities or business or the Fund, if the incurring of

such expenses was approved in advance by the Board of Trustees. The Trustees may also provide for reasonable compensation to be paid Trustees.

5.19 Liability of Trustees:

(a) The trustees may, but are not required to, secure the advice of counsel or consultants on any matter under consideration. Acting upon such advice shall be full protection and justification to the Trustees for anything suffered, done or admitted to be done in good faith and in accordance with and in reliance on such opinion, and the Trustees shall not be liable therefor.

(b) The Trustees and each individual Trustee shall not be liable for any error of judgment or for any loss arising out of any act or omission in the execution of their duties so long as they act in good faith and without gross negligence; nor shall any Trustee, in the absence of his own wilful misconduct, bad faith or gross negligence, be personally liable for the acts or omissions (whether performed at the request of the Trustees or not) of any other Trustee, or of any agent or attorney elected or appointed by or acting for the Trustees. The Fund shall exonerate, reimburse and save harmless the Trustees, individually and collectively, against any and all liabilities and reasonable expenses arising out of their trusteeship, except (as to the individual Trustee or Trustees directly involved) for expenses and liabilities arising out of wilful misconduct or gross negligence. No expense shall be deemed reasonable under this section unless and until approved by the Board of Trustees.

(c) The Trustees shall incur no liability and shall be fully protected in acting upon any instrument, certificate, or paper believed by them to be genuine and to be signed or presented by the proper person or persons, and shall be under no duty to make any investigation or inquiry as to

any statement contained in any such writing, but may accept the same as conclusive evidence of the truth and accuracy of the statements therein contained.

(d) Neither the Associations, individual employers, the Union or Local Unions nor any of them shall be liable in any respect for any of the obligations or acts of the Trustees even though such Trustees may be associated with, employed by, or otherwise connected with an Association, individual employer, Union or Local Union.

(e) Neither the Trustees nor any individual or successor Trustee shall be personally answerable or personally liable for any liabilities or debts of the Fund contracted by them as such Trustees, or for the nonfulfillment of contracts, but the same shall be paid out of the Fund, and the Fund is hereby charged with a first lien in favor of such Trustees for his or their security and indemnification against any liability of any kind which the Trustees or any of them may incur hereunder; provided, however, that nothing herein shall exempt any Trustee from liability arising out of his own wilful misconduct, bad faith or gross negligence, or entitle such Trustee to indemnification for any amounts paid or incurred as a result thereof.

5.20 Functions, Power and Duties of Trustees:

(a) The Associations, individual employers, and the Union and Local Unions irrevocably grant Power of Attorney to the Trustees now in office or subsequently appointed in accordance with the provisions of this Agreement and Declaration of Trust to administer said Fund and, as the representative of such parties, to exercise rights granted to the Trustees under Section 9.01.

(b) The Board of Trustees shall have the power to administer the Fund and to administer and maintain the Plan in effect, having and performing all powers and duties rea-

sonably necessary to maintain and operate the Plan in such a way as to accomplish its objectives. The detailed basis on which benefits are to be paid are hereinafter set forth in ARTICLE IX hereof. The Board of Trustees may at any time, and from time to time, amend or modify such Plan. In no event shall any amendment or modification of the Plan cause or result in any portion of the Fund reverting to, or being recoverable by, any of the Associations, any individual employer, the Union, or any Local Union, or cause or result in the diversion of any portion of the Fund to any purpose other than the exclusive benefit of employees or their beneficiaries under the Plan and the payment of the administrative expenses of the Fund and the Plan, or refund or erroneous payments.

(c) The Trustees shall deposit all monies received by them in such bank or banks as they may select for that purpose, providing such banks are members of the Federal Reserve System. All checks, drafts, vouchers or other withdrawals of funds from the account or accounts of the Trust Funds shall be countersigned by two Trustees, one Employer Trustee and one Union Trustee, who shall be the Chairman and the Secretary-Treasurer or alternates designated for such purpose.

5.21 Without limitation of the provisions of Section 5.20(b) of this Article, the Board of Trustees shall have power:

(a) To pay or cause to be paid out of the Fund the reasonable expenses incurred in the establishment of the Fund and the Plan.

(b) To establish and accumulate such reserve funds as may be adequate in the discretion of the Board to provide for administration expenses and other obligations of the Fund, including the maintenance in effect of the Plan.

(c) To employ, engage or contract with, such executive, consultant, actuarial, accounting, investment, administrative, clerical, secretarial and legal personnel and other employees or assistants, as may be necessary in connection with the administration of the Fund and the Plan and to pay or cause to be paid, out of the Fund, the compensation and necessary expenses of such personnel and assistants and the cost of office space, furnishings and supplies and other essentials required in such administration.

(d) To incur and pay or cause to be paid out of the Fund any other expense reasonably incidental to the administration of the Fund or the Plan.

(e) To compromise, settle, or release claims or demands, in favor of or against the Fund on such terms and conditions as the Board may deem desirable; provided, however, that this clause shall not excuse any violation of any of the Collective Bargaining Agreements.

(f) The Trustees shall have the power to invest and reinvest any funds which, in their sole and absolute discretion, they consider not required for current expenditures, such funds to be invested only in such investments as are legal for investment of trust funds under the laws of the State of California. However, no investments shall knowingly be made in the securities, obligations or properties of any Association, individual employer, Union or Local Union as defined herein. The Trustees may sell or otherwise dispose of such investments at any time and from time to time as they in their discretion determine.

(g) To enter into contracts to provide any or all of the benefits specified in the Plan, to terminate, modify or renew any such contracts or policies subject to the provisions of the Plan, and to exercise and claim all rights and benefits granted to the Board or the Fund by any such contracts.

(h) With or without any of the contracts mentioned in paragraph (g) of this Section, to pay or cause to be paid all or any part of the benefits provided in the Plan, to the persons entitled thereto under the Plan, and in accordance with the terms and provisions of the Plan.

(i) To purchase, sell, exchange, lease, convey or otherwise dispose of or to cause to be purchased, sold, exchanged, leased, conveyed or otherwise disposed of, any property of any kind forming a part of the Fund upon such terms as it may deem proper and to execute and deliver or cause to be executed and delivered, any and all instruments of conveyance or transfer in connection therewith.

(j) To construe the provisions of this Trust Agreement and the Plan and any such construction adopted by the Board in good faith shall be binding upon any and all parties or persons affected thereby.

(k) To pay or cause to be paid any and all real or personal property taxes, income taxes, or other taxes or assessment of any or all kinds levied or assessed upon or with respect to the Fund or the Plan.

(l) To maintain or cause to be maintained, on a current basis, all actuarial data, records and information in connection with the administration of the Plan and to cause the books and records to be checked and evaluated annually, or more often if the Board so determines, by the Fund consultant-actuary or consultant-actuaries as the case may be, whose report shall be available for inspection by interested persons at reasonable times and upon proper notice, at such place or places as may be designated by the Board; and the Board shall have the right to rely upon all such reports and records.

(m) To prepare or cause to be prepared such periodic reports concerning the affairs of the Fund and the Plan, as

the Board may deem advisable, and to furnish such reports to such persons as the Board may deem advisable.

(n) To adopt and prescribe reasonable rules and procedures, which shall not be inconsistent with the provisions of this Trust Agreement or of the Plan, governing the reporting of contributions and any and all other matters in connection with the Fund and the Plan.

(o) To exercise and perform any and all of the other powers and duties specified in this Trust Agreement or the Plan.

(p) To delegate any of their ministerial powers or duties to any one or more of the remaining Trustees, or to any agent or employee engaged by the Trustees. To delegate to an Investment Counselor the power to invest and reinvest the Trust Funds in accordance with provisions of paragraph 5.21(f).

(q) To coordinate its activities in the administration of the Fund and the Plan with the administrative activities of the Boards of Trustees of other employee benefit plans or trusts established or to be established for building tradesmen in California to such extent as may be necessary or desirable to minimize costs, eliminate unnecessary bookkeeping and other expenses for the individual employers and avoid or eliminate duplicating employer contributions with relation to the same employee.

(r) To enter into reciprocal arrangements with trustees of similar plans in the State of California that are or may be established by local unions of the Laborers' International Union of North America A.F.L.-C.I.O. for the purpose of providing continuing participation in the Plan for employees who may work a portion of the time in the jurisdiction of such other plans; and for employees regularly employed in the jurisdiction covered by this Plan; such arrangements to

be by transfer of credits or contributions or such other system as the Trustees shall determine which shall be compatible with equitable principles and in accordance with sound actuarial and accounting principles and practices.

(s) To employ legal counsel, it being understood that the Trust Fund shall be represented by joint counsel, one selected by the Union Trustees and one selected by the Employer Trustees, at such rate of compensation as may be determined appropriate by the Trustees.

5.22 The Board of Trustees shall procure fidelity bonds and such other bonds as may be required by law for each Trustee or other person authorized to receive, handle, deal with or draw upon the monies in the Fund for any purpose whatsoever, said bonds to be in such reasonable amount and to be obtained from such source as the Board shall determine. The cost of such bonds shall be paid out of the Fund.

5.23 The Board of Trustees shall maintain suitable and adequate records of and for the administration of the Fund and the Plan. The Board may require the Associations, any individual employer, the Union, any Local Union, an employee or any other beneficiary under the Plan to submit to it any information, data, report or documents reasonably relevant to and suitable for the purposes of such administration; provided, however, that the Union and the Local Unions shall not be required to submit lists of membership. The parties agree that they will use their best efforts to secure compliance with any reasonable request of the Board for any such information, data, report or documents. The Trustees may, at reasonable times and during normal business hours, audit or cause the audit or an inspection of the records of any individual employer which may be pertinent in connection with said contributions and/or reports and insofar as same may be necessary to accomplish the purpose

of this Trust Agreement. In the event such audit or inspection shall disclose that the individual employer is in default in the payment of his contributions to the Fund, or if such audit or inspection shall be made by reason of the failure of the individual employer to submit reports as required by the Trustees, the individual employer shall, upon demand, pay to the Fund the actual costs of such audit or inspection.

5.24 The books of account and records of the Board of Trustees, including the books of account and records pertaining to the Fund shall be audited at least once a year by a qualified certified public accountant to be selected by the Board. The Board shall also make other reports required by law. A statement of the results of the annual audit shall be available for inspection by interested persons at the principal office of the Fund and at such other suitable place as the Board may designate from time to time. Copies of such statement shall be delivered to the Associations, the Union and each Trustee within fifteen (15) days after the statement is prepared.

5.25 The Trustees shall have the power in their own names or otherwise, as in their discretion may be deemed necessary or desirable, to demand and enforce the prompt payment of contributions to the Fund, including payments due to delinquencies as provided in Section 6.04, and to assert and enforce all priorities, lien rights, and other claims or rights with respect to any contributions or payments belonging to the Fund, this trust or any of its beneficiaries, including the rights of file priority and other claims in bankruptcy. If any individual employer defaults in the making of such contributions or payments and if the Board consults or causes to be consulted legal counsel with respect thereto, or files or causes to be filed any suit or claim with respect thereto, there shall be added to the obligation of the individual employer who is in default, reasonable attorneys'

fees, court costs and all other reasonable expenses incurred in connection with such suit or claim, including any and all appellate proceedings therein.

ARTICLE VI—CONTRIBUTIONS

6.01 Contributions shall be paid into the Fund in such manner and with such reports as the Board of Trustees may prescribe.

6.02 Contributions to the Fund shall be due commencing June 1, 1965, for work on or after June 1, 1965, and shall be payable in the County of Los Angeles, California, in regular monthly installments starting on or before July 15, 1965, and continuing from month to month thereafter subject to the provisions of the Collective Bargaining Agreements. The contributions payable on or before July 15, 1965, shall include all payments which have theretofore accrued for work performed during the period from June 1, 1965, up to the close of the individual employer's payroll period ending closest to the last day of that month, and thereafter each monthly contribution shall include all payments which have accrued in the interim for work performed up to the close of individual employer's payroll period ending closest to the last day of the preceding calendar month. Each monthly contribution shall be accompanied by a report in a form prescribed by the Board of Trustees. Each contribution to the Fund shall be made promptly, and in any event on or before the 20th day of the calendar month in which it becomes payable, on which date said contribution, if not then paid in full, shall be delinquent.

6.03 The failure of an individual employer to pay the contribution required hereunder at the times and in the manner required by the Trustees shall constitute a violation of such individual employer's obligations hereunder. Nonpayment by an individual employer of any contribution as herein

provided shall not relieve any other individual employer of his obligation to make payment of his required contribution. The Trustees, or its assignee, may take any action necessary to enforce payment of the contributions due hereunder, including the right to sue such individual employer in a State Court of competent jurisdiction; and the delinquent individual employer shall be liable for all expenses of collection thereof, including actual attorneys' fees, incurred by the Trustees or the assignee of the Trust. If the Trustees collectively fail to take proper action against a delinquent individual employer to enforce collection of delinquent payments within a reasonable time after delinquency, such action may be authorized by vote of not less than four Union Trustees or not less than four Employer Trustees; and if such action be authorized by such vote, then any Trustee may institute such action for and on behalf of all of the Trustees. Effective upon any such default or delinquency, the employees, individually and collectively, assign to the Board for collection purposes all of their right, title and interest in and to said payments so due and confer upon and grant to the Trustees, or the Trustees' agent or assignee, all rights of action, lien right, preferences, priorities or other security or rights they may have in connection with or relating to such payments, including the right and authority to file claims in bankruptcy, mechanics' liens and any and all other kinds of claims, demands or actions, including statutory penalties, if any, and including the right to compromise claims. All delinquent payments collected by the Trustees shall be credited to the respective vacation accounts of the employees to whom the payments pertain and all penalties, liquidated damages and reimbursement for attorneys' fees and costs shall be credited to the administrative account of the Fund. No provision of this section or of any section of this Agreement, shall interfere with or qualify the

right of the Union and their representatives to enforce compliance with the terms and provisions of the Collective Bargaining Agreement or to assist in the processing of claims before the Labor Commissioner or any other claims for the payment of sums due the Vacation Plan.

6.04 The parties recognize and acknowledge that the regular and prompt filing of individual employer reports and the regular and prompt payment of individual employer contributions to the Fund is essential to the maintenance in effect of the Plan and the economic administration thereof, and that it would be extremely difficult, if not impracticable, to fix the actual expense and damage to the Fund and to the Plan which would result from the failure of an individual employer to make such reports and to pay such monthly contributions in full within the time provided above. Therefore, the amount of damage to the Fund and Plan resulting from failure to make reports or pay contributions within the time specified, shall be presumed to be the sum of $10.00 or 10% (ten per cent) of the amount of the contribution or contributions due, whichever is greater, for each delinquent report or contribution. These amounts shall become due and payable to the Fund as liquidated damages and not as a penalty, upon the day immediately following the date on which the report or the contribution or contributions become delinquent. Liquidated damages shall be paid for each delinquent report or contribution, even though a delinquent report shall show no contribution due; and shall be paid in addition to any contributions due. However, the Trustees, in their discretion, for good cause (and the Trustees shall have the sole right to determine what shall constitute good cause) shall have the right and power to waive all or any part of any sums due to the Fund as liquidated damages.

6.05 Nothing contained herein shall be deemed to authorize or prevent economic action by any Local Union

against any individual employer who is delinquent in his contributions to the Fund. All rights of any Local Union to refuse to furnish men to any delinquent individual employer, or to withdraw employees from the job of any such employer, or to strike or take other economic action against him, shall be determined by the provisions of the Collective Bargaining Agreement and by applicable rules of law, and shall not be deemed affected in any way by this Agreement.

6.06 Should any employer become delinquent in the payment of wages or contributions hereunder, so that it appears that the employer is or may be in danger of becoming insolvent, the Trustees, or any committee of the Trustees so delegated, may, after notice of its intent so to do being first given in writing to the employer, conduct a hearing to determine if good cause exists to require the employer to secure his obligations to any Trust to whom contributions are required to be paid by the Collective Bargaining Agreement, and to the employees for wages. The employer, the Union, the Association, and any interested person may attend such hearing and offer evidence. If the committee hearing such evidence determines that good cause exists to require the employer to secure his obligations to such Trusts and the employees for wages, it may require him to deposit with the Trust Fund a surety bond, in a form to be uniformly required, in a sum not to exceed $3,000.00. Such bond shall be for such term as the committee shall deem necessary, but not to exceed the term of the Collective Bargaining Agreement. Failure to comply with a determination made hereunder shall be deemed a violation within the meaning of Section 6.03 hereof. The liability of the employer and the surety on his bond with respect to sums required by the Collective Bargaining Agreement to be paid to any of the obligees under such bond shall be deemed conclusively determined if, after a hearing at which the employer shall be

entitled to appear and present evidence, the Trustees shall determine and fix the amount of the payments which said employer shall have failed to make to said obligees or any or all of them. Written notice of such determination shall be given by the obligees, or any or all of them, to the employer and his surety within thirty (30) days after the determination of the amount due, whereupon surety shall immediately become liable therefor, together with interest on that amount from the date of said notice, together with reasonable attorneys' fees and costs, in the event of suit to enforce any obligation hereunder. In the event the amounts found due to the obligees shall exceed the penal sum of the bond, the penal sum of the bond shall be applied to the claims of the respective obligees in the following order of priority:

(a) First: For vacation contributions to this Trust Fund;

(b) Second: For health and welfare contributions to the Laborers Health and Welfare Trust Fund for Southern California;

(c) Third: For pension contributions to the Construction Laborers Pension Trust for Southern California;

(d) Fourth: Liquidated damages, attorneys' fees, and expenses of collection due the respective obligees in the order of priority specified in subparagraphs (a) through (c) above.

In the event any of the laborer employees of employer shall have a claim for unpaid wages, he shall be entitled to recover directly on this bond up to the penal sum thereof but not until such time as the Trustees of the respective obligees

shall have determined and have notified employer and his surety in writing that they have no claim against the employer at that time for unpaid contributions.

ARTICLE VII—GENERAL PROVISIONS

7.01 No party who has verified that he or it is dealing with the duly appointed Trustees, or any of them, shall be obligated to see to the application of any monies or property of the Fund, or to see that the terms of this Trust Agreement have been complied with, or to inquire as to the necessity or expedience of any act of the Trustees. Every instrument executed by the Board of Trustees or by its direction shall be conclusive in favor of every person who relies on it, that (A) at the time of the delivery of the instrument this Trust Agreement was in full force and effect; (B) the instrument was executed in accordance with the terms and conditions of this Trust Agreement; and (C) the Board was duly authorized to execute the instrument or direct its execution.

7.02 The duties, responsibilities, liabilities and disabilities of any Trustee under this Trust Agreement shall be determined solely by the express provisions of this Trust Agreement and no further duties, responsibilities, liabilities or disabilities shall be implied or imposed.

7.03 Neither the Associations, any individual employer, the Union, any Local Union, nor any of the Trustees shall be responsible or liable for:

(a) The validity of this Trust Agreement or the Plan.

(b) The form, validity, sufficiency, or effect of any contract which may be entered into.

(c) Any delay occasioned by any restriction or provision in this Trust Agreement, the Plan, the rules and procedures of the Board of Trustees issued hereunder, any contract or policy procured in the course of the administration of the Fund or Plan, or by any other proper procedure in such

administration of the Fund or Plan, or by any other proper procedure in such administration; provided, however, that this clause shall not excuse any violation of any of the Collective Bargaining Agreements.

(d) The making or retention of any deposit or investment of the Fund, or any portion thereof, or the disposition of any such investment, or the failure to make any deposit or investment of the Fund, or any portion thereof, or any loss or diminution of the Fund, except as to the particular person involved, such loss as may be due to the gross neglect or wilful misconduct of such person.

7.04 Neither the Associations, any individual employer, the Union, nor any Local Union shall be liable in any respect for any of the obligations, acts or omissions of the Trustees or any of them because such Trustees are in any way associated with any such Associations, individual employer, Union, or Local Unions.

7.05 No decision shall be made by the Board of Trustees in the administration of the Fund or Plan which is unreasonably discriminatory under the provisions of the Internal Revenue Code, or under any other applicable law or regulation.

7.06 The name of the Fund may be used to designate the Trustees collectively and all instruments may be effected by the Board of Trustees in such name.

7.07 Subject to the provisions of the Collective Bargaining Agreements, the rights and duties of all parties, including the Associations, the individual employers, the Union, the Local Unions, the employees and their beneficiaries, and the Trustees, shall be governed by the provisions of this Trust Agreement and the Plan and any insurance policies or contracts procured or executed pursuant to this Trust Agreement.

7.08 No employee, or other beneficiary, shall have any right or claim to benefits under the Plan, other than as specified in such Plan. Any dispute as to eligibility, type, amount or duration of benefit shall be resolved by the Board of Trustees under and pursuant to the Plan, and its decision of the dispute shall be final and binding upon all parties thereto. No action may be brought for benefits under the Plan or to enforce any right thereunder until after the claim therefor has been submitted to, and determined by the Board, and thereafter the only action that may be brought is one to enforce the decision of the Board. Neither the Associations, any individual employer, the Union, any Local Union, nor any of the Trustees shall be liable for the failure or omission for any reason to pay any benefits under the Plan.

7.09 Any notice required to be given under the terms of this Trust Agreement or the Plan shall be deemed to have been duly served if delivered personally to the person to be notified in writing, or if mailed in a sealed envelope, postage prepaid, to such person at his last known address as shown in the records of the Fund, or if sent by wire to such person at said last known address.

7.10 This Trust Agreement shall be binding upon and inure to the benefit of all individual employers who are now or hereafter may become members of the Associations or who become in any other way a party to any of the Collective Bargaining Agreements and this Trust Agreement, subject to the approval of the Board of Trustees as herein provided, and the heirs, executors, administrators, successors, purchasers and assigns of the Associations, any individual employer, the Union, any Local Union, and the Trustees, subject to the approval of the Board of Trustees as herein provided.

7.11 This Trust Agreement may be executed in a number of counterparts, each of which shall have the force and effect of any original, and no more than one counterpart need be signed by any party hereto; provided, however, that each of said counterparts shall be filed in the principal office of the Fund.

7.12 All questions pertaining to this Trust Agreement, the Fund or the Plan, and their validity, administration and construction, shall be determined in accordance with the laws of the State of California and with any pertinent laws of the United States.

7.13 If any provision of this Trust Agreement, the Plan, the rules and procedures issued pursuant thereto, or any step in the administration of the Fund or the Plan is held to be illegal or invalid for any reason, such illegality or invalidity shall not affect the remaining portions of this Trust Agreement, the Plan and the rules and procedures, unless such illegality or invalidity prevents accomplishment of the objectives and purposes of this Trust Agreement and the Plan. In the event of any such holding, the parties will immediately commence negotiations to attempt to remedy any such defect.

7.14 All books, records, papers, reports, documents or other information obtained with respect to the Fund or the Plan shall be confidential, and shall not be made public or used for any other purposes, except to the extent necessary for the proper administration of the Fund or the Plan and for the cooperation with other funds or plans authorized by other provisions of this agreement. Nothing in this section shall prohibit the preparation or publication of statistical data and summary reports with respect to the operations of the Fund and the Plan.

7.15 In the establishment and maintenance of the Plan, and in the execution, amendment and implementation of this Trust Agreement, the Union acts for and on behalf of the employees and as their collective bargaining representatives and agents, and every agreement or act of the Union in connection with the establishment, maintenance and operation of the Fund or the Plan shall be deemed to be and is the agreement or act of the employee, or employees, concerned or affected by such agreement or action.

7.16 In the establishment and maintenance of the Plan, and in the execution, amendment and implementation of this Trust Agreement, the Associations act for and on behalf of the individual employers who, at the time of the execution of this Trust Agreement are, or during the term thereof become eligible members of any of the Associations. Also, for and on behalf of any other individual employer who is required by any of the Collective Bargaining Agreements to make contributions to the Fund or who in fact makes one or more contributions to the Fund; provided such contribution or obligation to make such was favorably approved by the Board of Trustees. Every agreement or act of the Associations in connection with the establishment, maintenance and operation of the Fund or the Plan shall be deemed to be and is the agreement or act of the individual employers, or individual employer, concerned or affected by such agreement or action.

7.17 It is the intent and purpose of the parties that contributions to the Fund shall be at all times deductible by the individual employers for income tax purposes in the taxable year when paid, and that the Trust created hereby shall be at all times tax exempt. Application for the qualification of the Trust created by this Trust Agreement under the Internal Revenue Code shall be made as soon as practicable, and the parties and the Board of Trustees shall do whatever may

be necessary to secure such qualification as soon as possible. If any administrative or judicial ruling holds that any provision of this Trust Agreement or of the Plan prevents or defeats the qualification of the Trust as herein provided or any other objective stated in this Section, either under presently existing laws or regulations or under any laws or regulations hereafter enacted or adopted, or if for any reason it shall be necessary or desirable to amend this Trust Agreement or the Plan to accomplish any such objective, the parties will forthwith enter into negotiations with regard to the amendment of this Trust Agreement or the Plan in such respects as may be necessary to accomplish such qualification or other objective, consistent with the other objectives and purposes of this agreement, and any such amendment shall be effective, insofar as practicable, as of the effective date of this Trust Agreement or of the Plan or as of the effective date of any such law or regulation hereafter enacted or adopted, as the case may require.

7.18 In any action or proceeding affecting the Fund, the Plan or the Trust hereby established, it shall be necessary to join as the parties only the Trustees, and no Association, individual employer, the Union, Local Union, employee, beneficiary or any other person shall be entitled to notice of any such proceeding or to service of process therein. Any final judgment entered in any such action or proceeding shall be binding upon all of the above mentioned parties so long as such judgment does not attempt or purport to impose any personal liability upon or against any party not joined or not served in any such action or proceeding.

7.19 A Trustee of this Trust may also be a beneficiary thereof if he otherwise qualifies as an eligible employee and nothing contained herein shall be construed or interpreted to prevent any Trustee, who is also an eligible employee, from participating in the benefits of the Plan.

7.20 Wherever any words are used in this Agreement and Declaration of Trust in the masculine gender they shall be construed as though they were also used in the feminine or neuter gender in all situations where they would so apply, and vice versa; and wherever any words are used in this Agreement and Declaration of Trust in the singular form, they shall be construed as though they were also used in the plural form in all situations where they would so apply, and vice versa.

ARTICLE VIII—ADMISSION OF ADDITIONAL EMPLOYERS OR EMPLOYEES

8.01 Any individual employer (or group of individual employers) who is not a member of or represented by the Associations but who is performing work coming within the jurisdiction of the Union, may become a party to this Trust Agreement, upon approval by the Board of Trustees, by executing in writing and depositing with the Board of Trustees his or its acceptance of any of the Collective Bargaining Agreements and of this Trust Agreement, in a form acceptable to the Board. The Board may provide that this requirement may be satisfied by depositing such an acceptance with the Board of Trustees of the Laborers Health and Welfare Trust for Southern California.

8.02 Any individual employer who executes and deposits any such written acceptance, or who in fact makes one or more contributions to the Fund with the approval of the Board of Trustees assumes and shall be bound by all of the obligations imposed by this Trust Agreement upon the individual employer, is entitled to all rights under this Trust Agreement and is otherwise subject to it in all respects.

8.03 The original signatory Associations and the Union and Local Unions shall at all times have the right and power to select and remove the Trustees and their successors under

this agreement in accordance with the terms of ARTICLE V. Any individual employer and Local Union entering this Plan after the initial effective date agrees to be bound by this provision.

ARTICLE IX—THE PLAN

9.01 On and after July 1, 1966, employees entitled to vacation benefits shall have the right to be paid the sums credited to their respective vacation amounts, subject to the terms and conditions as may be provided by regulation or resolution of the Board of Trustees pursuant to the authority given by this Agreement.

9.02 On or about July 1, 1966, an employee entitled to benefits under this Trust Agreement shall have the right to receive the monies credited to his vacation account by reason of work performed by him in the period June 1, 1965 through March 31, 1966. Thereafter, the monies credited to the vacation account of each employee for work performed by him during the period from April 1 of each year to the last day of March of the succeeding year, or received by the Trust during that period (hereinafter called "normal distribution"), shall be distributed commencing with July 1 of such succeeding calendar year; provided, however, that any such normal distribution so paid shall not include monies received by the Trust later than May 20 of the year in which the vacation benefit is to be paid. A second distribution (hereinafter called "supplemental distribution") shall be made each year commencing on December 1, for the benefit of employees who have duly complied with the application for vacation benefit requirements, as hereinafter more particularly set forth in Section 9.04, with respect to monies received after May 20 and before September 30, which were, therefore, not included in the previous normal distribution.

9.03 Except as provided in Section 9.05, the amount credited to an employee's vacation account shall not be accumulative from one annual period to another, and if any employee fails to cash his check for such amount prior to the 1st day of April following its date of issuance, in the case of the checks issued on or about July 1, or the 1st day of June following its date of issuance, in the case of checks issued on or about December 1, he shall be deemed to have elected to contribute such amount to the cost of maintaining the Fund and Plan in effect and the check issued to him for such period shall thereupon be void and ineffective. All such amounts so contributed shall be transferred promptly to the administrative account of the Fund, and such employee shall be deemed to have released to the Trustees all right, title and interest in and to such amount.

°9.04 Not earlier than January 1 nor later than March 31 of any year, an employee shall make application to the Trust for his normal distribution of vacation benefits, such application to be made in such manner and on such form as the Trustees shall from time to time prescribe. If any employee fails to make such application for a particular normal distribution of vacation benefits prior to the 31st day of March of the year following such normal distribution he shall be deemed to have elected to contribute such amount as well as any related supplemental distribution amounts to the cost of maintaining the Fund and Plan in effect and the amount then credited to his account shall be transferred promptly to the administrative account of the Fund, and such employee shall be deemed to have released to the Trustees all right, title and interest in and to such amount. Subsequent to July 1, but not later than September 30 of each year, an Employee may make application to the Board

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°Amended January 3, 1967.

of Trustees for distribution of his vacation benefits, if any, credited to his account for work in the 12 calendar months ending March 31 of that same year, such application to be made in the manner and on such form as the Board of Trustees shall from time to time prescribe. In the event the Employee has not made a prior application for Normal Distribution in that year, he shall be entitled to receive both the Normal Distribution and the Supplemental Distribution. An Employee who has received his Normal Distribution may nevertheless make application for and receive a Supplemental Distribution relative to the same work year.

9.05 Notwithstanding the provisions of Section 9.03 and 9.04 above, establishing periods of limitation for the application for annual benefits or the cashing of checks, for the year ending March 31, 1966, and the year ending March 31, 1967, the time for making application for benefits shall be extended to and include March 31, 1968 and the time for cashing checks shall be extended to September 30, 1968.

9.06 The Board of Trustees shall establish and maintain records of the contributions received with respect to the work performed by each employee and shall credit such contributions to a vacation account for each such employee. The account of each employee shall be reflected in the records of the Fund, but, notwithstanding such records, the Board of Trustees shall have the right and authority to commingle such contributions with any or all other contributions received with respect to the work performed by other employees and any or all other payments or contributions to the Fund, to deposit all or any part of such commingled monies in one or more bank accounts or accounts in savings and loan associations, to invest and reinvest all or any portion of such monies as provided in Section 5.21(f) of ARTICLE V of this Trust Agreement, and to pay and distribute or cause the payment and distribution of such monies in

accordance with the provisions of this Trust Agreement. The Board may not charge against or deduct from the vacation account of any employee any administrative charge for use in defraying the cost of administering the Fund and Vacation Fund. Such portion of the monies as represents benefits deemed contributed to the Board by an employee pursuant to this Article, liquidated damages, recovery of expenses of collection and any interest or other return shall be used by the Board to defray such administrative cost and to provide for a reserve for the payment of such cost, and if not so used, shall be distributed equitably to the employees and their beneficiaries at such times, upon such terms and in such proportions, without regard to any specific vacation account or accounts, as Board of Trustees may determine.

9.07 Contributions to the Fund and any liquidated damages payable in connection therewith, shall be deemed to be, and shall be, a part of the wages due to the employees with respect to whose work such payments are made. No individual employer shall have any right, title or interest in such contributions, or any part thereof, and no part thereof shall ever revert to any such individual employer. Insofar as consistent with the other provisions of this Agreement, contributions shall be treated and reported as a part of the compensation earned by the employee at the time the work to which the contributions pertain is performed, subject to the terms of this Agreement, and shall be deemed to be, and shall be treated as, subject to withholding tax and social security and unemployment taxes as a part of the total compensation payable at the end of the individual employer's payroll period during which such work is performed or paid for, but the full per hour contribution shall be transmitted to the Fund. Such contributions shall not be a part of the hourly wage rates for the purpose of computing overtime, or reporting time or for any other purpose of the Collective

Bargaining Agreement, or part of the "regular rate" or "basic hourly rate" for the purpose of the Federal Fair Labor Standards Act or the Walsh-Healy Act or any other law, ordinance or regulation, except that if, consistent with the foregoing, such contributions can be considered and treated as a part of the wages prevailing in the area for the purpose of the Federal Davis-Bacon Act and similar federal, state or local laws, ordinances or regulations, they shall be so considered and treated. If any administrative or judicial ruling holds that any provision of this Agreement prevents or defeats any of the objectives stated in this section, the parties will forthwith enter into negotiations with regard to the amendment of this Agreement in such respects as may be necessary to accomplish the objectives so stated, consistent with the other objectives and purposes of this Agreement, and any such amendment shall be effective, insofar as practicable, as of the date of this Agreement.

9.08 It is the intent and purpose of the Plan, and of this Agreement, and a material part of the consideration for the making of contributions to the Fund by individual employers, that the money in each vacation account shall be received by the employee entitled thereto personally. Accordingly, no payments due the Fund and no monies in vacation accounts established pursuant to the Plan shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge by any employee or any other persons and any such anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge shall be void and ineffective. The money credited to a vacation account shall be subject to withdrawal and distribution only at the times, in the manner and for the purposes specified in this Agreement.

9.09 Each employee entitled to benefits under the Plan may file with the Board of Trustees a designation of the

person to whom such benefits shall be paid in the event of the employee's death. The employee may change a beneficiary at any time by signing and filing a new designation. If an employee dies, the amount credited to his vacation account shall be paid to the beneficiary so named by the employee, or if no beneficiary is named, or the beneficiary so named is dead, to the person or persons entitled thereto by law. Payment to such person or persons shall be a complete discharge for liability to the extent of such payment and the Board shall not be obligated to see to the application of money so paid. The person or persons claiming any such payment shall file with the Board a signed application for the payment and proof of the death of the employee and of the right of the applicant or applicants to receive such payment, all in such form as the Board shall prescribe, at any time after death of the employee but not later than the end of the month of April immediately succeeding the calendar year in which the employee dies, and if such applicant and proof is not filed within such time the person or persons entitled to the payment shall be deemed to have elected to contribute such amount to the cost of maintaining the Vacation Plan in effect and to have released to the Board and the Plan all right, title and interest in and to such payment.

9.10 (Deleted January 3, 1967).

9.11 The Trustees in their absolute discretion and upon good and sufficient reasons shown, may relieve any employee from any default with respect to the provisions of this Article on any terms and conditions they may deem desirable or appropriate.

9.12 Upon each date upon which distribution is to be made hereunder, separate checks shall be issued to each employee for each calendar year for which vacation benefits are being distributed, such calendar year to be identified upon each such check.

9.13 This ARTICLE IX may be amended or modified by action of the Trustee subject to the terms and conditions of the Collective Bargaining Agreement and to Section 10.07 of ARTICLE X of this Trust Agreement. In such case, the provisions of ARTICLE X, Section 10.01 through 10.04 of this Agreement shall not apply to such amendment.

ARTICLE X—AMENDMENT, DURATION AND TERMINATION

10.01 This Agreement and Declaration of Trust and the Plan which is attached hereto as a part hereof may be amended, from time to time, in any respect not specifically prohibited herein. The right and power to amend this Agreement and Declaration of Trust and Vacation Plan is hereby granted to and vested exclusively in the Trustees. The method and procedure for amending this Agreement shall be as follows:

(a) The proposed amendment must first be presented and discussed at a meeting of the Board of Trustees. The amendment shall not be voted upon at the first meeting at which it is considered.

(b) The form of the proposed amendment must be set forth in writing and mailed to each Trustee not less than ten (10) days prior to the meeting at which it is to be voted upon, together with a notice stating the time and place of the meeting of the Trustees at which such amendment is to be voted upon.

(c) At the meeting set forth in the notice mentioned above, the Trustees shall vote upon the proposed amendment.

Amendments may also be made by unanimous written consent of the Trustees as provided in Section 5.16 above.

Any amendments shall be binding upon all parties to this Agreement. Such amendments shall be evidenced by written

instruments authenticated by the Chairman and Secretary. Such written instruments shall be attached to this Agreement.

10.02 No amendment may be adopted which will alter the basic principles of this Agreement and Declaration of Trust or be in conflict with the then existing bargaining agreements with the Union or be contrary to any then applicable law or governmental rule or regulation.

10.03 No Amendment shall be permitted which permits the Fund to be used other than to provide for vacation benefits for the employees and for the administration of the Fund. Nor shall any amendment be permitted which gives to the Association, individual employer, Union, or Local Union, individually or collectively, any individual right, title or interest in the money or property of the Fund, except as to the benefits to be paid in accordance with this Agreement.

10.04 Whenever an amendment is adopted in accordance with this Article, a copy thereof shall be distributed to each Trustee, the Association and the Union.

10.05 Subject to the provisions of this Article and Section 7.13 hereof, this Trust is irrevocable and the provisions of this Trust Agreement shall continue in effect during the term of the Collective Bargaining Agreements, and any amendments, modifications, renewals, or extensions thereof with respect to such Collective Bargaining Agreements as provide for the continuation of payments into the Fund.

10.06 This Trust Agreement and the Trust herein provided may be terminated by the Associations and the Union by an instrument in writing executed by mutual consent at any time, subject to the provisions of Section 10.07 of this Article. Upon the termination of such Trust, any monies remaining in the Fund after the payment of all expenses and

obligations of the Trust shall be exhausted by application of the Trust Estate to the following purposes so long as the assets of the Trust Fund will permit after the payment of all expenses of operating and/or winding up the Fund:

(a) To pay or provide for the payment of all reasonable and necessary expenses in connection with collecting the employer contributions and administering the affairs of the Trust and Fund, including but without limitation, all expenses which may be incurred in connection with the establishment of the Trust and Fund, and the providing of fidelity bonds, the employment of administrative, legal, expert and clerical assistance, the purchasing or leasing of such materials, supplies and equipment as the Trustees in their discretion find necessary and appropriate in the performance of their duties.

(b) To pay or provide for the payment of additional vacation benefits to employees, eligible at the time of the termination of the Trust in such amounts and forms as to the Trustees shall appear to be most equitable.

The administration of such benefits shall be under the supervision of the Trustees acting as of such date and shall be in accordance with the terms and provisions of this Agreement and the Plan.

10.07 In no event shall any amendment or modification of this Trust Agreement, or the termination of this Trust Agreement, cause or result in any portion of the Fund reverting to, or being recoverable by, any Association, any individual employer, the Union, or any Local Union, or cause or result in the diversion of any portion of the Fund to any purpose other than the exclusive benefit of employees or their beneficiaries under the Plan and the payment of the administrative expenses of the Fund and the Plan, or the refund of erroneous payments.

10.08 In no event shall the Trust established by this Trust Agreement continue for a longer period than is permitted by law.

Executed at Los Angeles County, California, as of the 14th day of April, 1966.

EACH OF THOSE SIGNING AS "ASSOCIATIONS" BELOW EXPRESSLY WARRANTS THAT HE IS AUTHORIZED TO EXECUTE THIS AGREEMENT ON BEHALF OF THE ASSOCIATION LISTED OVER HIS SIGNATURE AND WARRANTS THAT ALL OF THE ELIGIBLE MEMBERS OF SAID "ASSOCIATION" ARE PARTIES TO AND BOUND BY THE TERMS AND PROVISIONS OF THIS AGREEMENT FOR ITS DURATION; AND FURTHER WARRANTS THAT ANY INDIVIDUAL EMPLOYER WHO SHALL BECOME AN ELIGIBLE MEMBER OF SAID "ASSOCIATION" ON OR AFTER THIS DATE AND DURING THE TERM OF THIS AGREEMENT SHALL AUTOMATICALLY BECOME SUBJECT TO AND BOUND BY THIS AGREEMENT DURING ITS TERM.

Associations

SOUTHERN CALIFORNIA CHAPTER OF THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA

/s/ By W. D. Shaw

BUILDING CONTRACTORS' ASSOCIATION OF CALIFORNIA, INC.

/s/ By Edward M. Sills

ENGINEERING AND GRADING CONTRACTORS' ASSOCIATION, INC.

/s/ By W. C. Burke

HOME BUILDERS ASSOCIATION OF LOS ANGELES, ORANGE AND VENTURA COUNTIES,
(successor to HOME BUILDERS INSTITUTE, INC.)
/s/ By R. A. Alsweet

Union

SOUTHERN CALIFORNIA DISTRICT COUNCIL OF LABORERS, INDIVIDUALLY AND FOR AND ON BEHALF OF ITS AFFILIATED LOCAL UNIONS IN SOUTHERN CALIFORNIA, WHICH HAVE JURISDICTION OVER THE WORK AS SET FORTH IN THAT CERTAIN DOCUMENT KNOWN AS "MASTER LABOR AGREEMENT BETWEEN SOUTHERN CALIFORNIA GENERAL CONTRACTORS AND SOUTHERN CALIFORNIA DISTRICT COUNCIL OF LABORERS," DATED JUNE 1, 1965.
/s/ By James V. Flores
/s/ By Ray Waters
/s/ By James V. Brimhall

The undersigned, named as Original Trustees in the foregoing Agreement and Declaration of Trust, do acknowledge they have read the foregoing instrument, do understand the contents thereof, and do hereby agree to act as Trustees thereunder, to comply with all of its terms and provisions,

and to hold the Fund created by said Agreement in trust for the uses and purposes set forth in the Agreement.

/s/ James V. Flores
/s/ James H. Crowell
/s/ Ray Waters
/s/ Ray Mendoza
/s/ Joseph Y. Murdock
/s/ Ray M. Wilson
/s/ Don E. Graves
/s/ Nick Orsua
/s/ S. J. Hibbler
/s/ Herb W. Smith
/s/ R. C. Gallyon
/s/ Peter E. Johnson
/s/ Reed Sprinkel
/s/ E. M. Barker
/s/ R. A. Alsweet
/s/ Syd Carnine
DATED: April 14, 1966.

EXHIBIT "B".

State of California Franchise Tax Board.

CERTIFICATE OF TAX DUE AND DELINQUENCY

Filed Pursuant to Part 10 or 11, Division 2, Revenue and Taxation Code.

State of California, County of Sacramento—ss.

The Franchise Tax Board does hereby certify:

That the taxpayer named below has become and is delinquent in payment of tax, penalties, and interest imposed upon said taxpayer under the provisions of the California Revenue and Taxation Code.

That the name of said taxpayer, the last known address, and the amount of tax, penalties, and interest with reference to which said taxpayer is now delinquent are as follows:

Jesse Murphy
10003 South Spring Street
Los Angeles, CA 90003

Year Ended	Tax	Penalties	Interest	Costs	Payments	Total
12/76	$37.00	$ 00	$11.70	$0.00	$0.00	$48.70
TOTALS	$37.00	$0.00	$11.70	$0.00	$0.00	$48.70

Additional interest on the total unpaid tax and interest bearing penalties accrues from May 31, 1980, at $0.012 per day.

That the following Certificate(s) of Amount of Tax, Penalties, and Interest Due have been filed as follows: None

That the said taxpayer is indebted to the State of California in the above amount; that no part of said indebtedness has been paid and that the whole thereof is now due, owing and unpaid from said taxpayer to the State of California; that the Franchise Tax Board has fully complied with all provisions of the Revenue and Taxation Code relating to the computation and levy of said tax, penalties, and interest.

IN WITNESS WHEREOF, the Franchise Tax Board has caused this Certificate to be executed in its name and on its behalf and its seal to be affixed by the under-signed, thereunto duly authorized.

Dated June 9, 1980

(Seal)

FRANCHISE TAX BOARD
of the State of California
Telephone (916) 355-0945

By /s/ John D. Dykeman
Authorized Representative

EXHIBIT "C".

[Letterhead]

State Of California
FRANCISE TAX BOARD
Sacramento, CA 95867

RE: Name: Jesse MURPHY
Social Security No.: 545 38 5120

Gentlemen:

Receipt is acknowledged of a lien from your office against vacation benefits due the above-named.

On January 11, 1977, co-counsel for this Trust requested an opinion letter from the Administrator, Pension and Welfare Benefit Programs, United States Department of Labor, as to whether we are permitted to honor such lien under the provisions of the Employee Retirement Income Security Act of 1974.

Pending a reply, we are holding your lien and we are also holding payment of vacation benefits to the beneficiary named above.

Sincerely,

/s/ Gladys Gomez
Gladys Gomez
VACATION DEPARTMENT

Received in March 14, 1979, Special Procedures.

EXHIBIT "D".

State of California Franchise Tax Board.

CERTIFICATE OF TAX DUE AND DELINQUENCY

Filed Pursuant to Part 10 or 11, Division 2, Revenue and Taxation Code.

State of California, County of Sacramento—ss.

The Franchise Tax Board does hereby certify:

That the taxpayer named below has become and is delinquent in payment of tax, penalties, and interest imposed upon said taxpayer under the provisions of the California Revenue and Taxation Code.

That the name of said taxpayer, the last known address, and the amount of tax, penalties, and interest with reference to which said taxpayer is now delinquent are as follows:

Eriberto G. Salcedo
11852 Lakeland Road
Norwalk, CA 90650

Year Ended	Tax	Penalties	Interest	Costs	Payments	Total
12/75	$232.00	$58.00	$67.38	$0.00	$189.00	$168.38
12/76	30.00	0.00	8.57	0.00	0.00	38.57
TOTALS	$262.00	$58.00	$75.95	$0.00	$189.00	$206.95

Additional interest on the total unpaid tax and interest bearing penalties accrues from May 31, 1980, at $0.043 per day.

That the following Certificate(s) of Amount of Tax, Penalties, and Interest Due have been filed as follows: None

That the said taxpayer is indebted to the State of California in the above amount; that no part of said indebtedness has been paid and that the whole thereof is now due, owing and unpaid from said taxpayer to the State of California; that the Franchise Tax Board has fully complied with all pro-

visions of the Revenue and Taxation Code relating to the computation and levy of said tax, penalties, and interest.

IN WITNESS WHEREOF, the Franchise Tax Board has caused this Certificate to be executed in its name and on its behalf and its seal to be affixed by the under-signed, thereunto duly authorized.

Dated June 9, 1980

(Seal)

FRANCHISE TAX BOARD
of the State of California
Telephone (916) 355-0945

By /s/ John D. Dykeman
Authorized Representative

EXHIBIT "E".

[Letterhead]

State of California
Franchise Tax Board
Sacramento, CA 95867

Jan. 18, 1978

Re: Name: Eriberto G. Salcedo
Social Security No. 559 62 1369
Your Br. No.: 97

Gentlemen:

Receipt is acknowledged of a lien from your office against vacation benefits due the above-named.

On January 11, 1977, co-counsel for this Trust requested an opinion letter from the Administrator, Pension and Welfare Benefit Programs, United States Department of Labor, as to whether we are permitted to honor such lien under the provisions of the Employee Retirement Income Security Act of 1974.

Pending a reply, we are holding your lien and we are also holding payment of vacation benefits to the beneficiary named above.

Sincerely,

/s/ N. Malitz
N. Malitz
VACATION DEPARTMENT

EXHIBIT "F".

State of California Franchise Tax Board.

CERTIFICATE OF TAX DUE AND DELINQUENCY

Filed Pursuant to Part 10 or 11, Division 2, Revenue and Taxation Code.

State of California, County of Sacramento—ss.

The Franchise Tax Board does hereby certify:

That the taxpayer named below has become and is delinquent in payment of tax, penalties, and interest imposed upon said taxpayer under the provisions of the California Revenue and Taxation Code.

That the name of said taxpayer, the last known address, and the amount of tax, penalties, and interest with reference to which said taxpayer is now delinquent are as follows:

Vincente Zarate
19223 Saticoy #34
Reseda, CA 91335

Year Ended	Tax	Penalties	Interest	Costs	Payments	Total
12/77	$586.00	$28.32	$24.59	$0.00	$514.00	$124.91
TOTALS	$586.00	$28.32	$24.59	$0.00	$514.00	$124.91

Additional penalty on the total unpaid tax accrues from May 31, 1980, at $0.012 per day until April 15, 1981.

Additional interest on the total unpaid tax and interest bearing penalties accrues from May 31, 1980, at $0.028 per day.

That the following Certificate(s) of Amount of Tax, Penalties, and Interest Due have been filed as follows: None

That the said taxpayer is indebted to the State of California in the above amount; that no part of said indebtedness has been paid and that the whole thereof is now due, owing and unpaid from said taxpayer to the State of California; that the Franchise Tax Board has fully complied with all pro-

visions of the Revenue and Taxation Code relating to the computation and levy of said tax, penalties, and interest.

IN WITNESS WHEREOF, the Franchise Tax Board has caused this Certificate to be executed in its name and on its behalf and its seal to be affixed by the under-signed, thereunto duly authorized.

Dated June 9, 1980

(Seal)

FRANCHISE TAX BOARD
of the State of California
Telephone (916) 355-0945

By /s/ John D. Dykeman
Authorized Representative

EXHIBIT "G".

[Letterhead]

State of California
FRANCHISE TAX BOARD
Sacramento, CA 95867

RE: Name: V. ZARATE
Social Security No.: 569 70 7202

Gentlemen:

Receipt is acknowledged of a lien from your office against vacation benefits due the above-named.

On January 11, 1977, co-counsel for this Trust requested an opinion letter from the Administrator, Pension and Welfare Benefit Programs, United States Department of Labor, as to whether we are permitted to honor such lien under the provisions of the Employee Retirement Income Security Act of 1974.

Pending a reply, we are holding your lien and we are also holding payment of vacation benefits to the beneficiary named above.

Sincerely,

/s/ Gladys Gomez
GLADYS GOMEZ
VACATION DEPARTMENT

Received in March 14, 1979, Special Procedures.

EXHIBIT "H".

[Letterhead]

Received in January 15, 1980, Special Procedures.

January 7, 1980

Mr. John D. Dykeman
Special Procedures Section
Franchise Tax Board
Sacramento, California 95867

Re: Construction Laborers Vacation Trust for Southern California
Your File No. 340:97:JDD:dmf

Dear Mr. Dykeman:

We have now finally received the opinion letter from the United States Department of Labor relative to the liens which you have served upon us for personal income tax, as well as other liens which have been served upon us by the Franchise Tax Board. We are enclosing a copy of that opinion letter.

The conclusion which is set forth in the first full paragraph of the fourth page is that Section 514 of ERISA pre-empts State law and that the Trustees lack the power to honor the levies made upon us by the State of California.

Co-counsel propose to recommend to the Board of Trustees at their next meeting that the monies which have been withheld pending the receipt of this opinion letter be distributed to the Plan participants.

Since the next meeting has not yet been scheduled, we would assume that it would not be set before the middle of

February, 1980, in the event you desire to institute legal action to test this opinion.

Very truly yours,
RICHMAN & GARRETT
/s/ Lionel Richman
Lionel Richman

LR/hal
cc (w/enc.): George M. Cox, Esq.
Mr. Edward Ashton
Mr. Ray M. Wilson
Construction Laborers Vacation Trust
for Southern California

[Letterhead]

U.S. Department of Labor.

Dec. 28, 1979

Mr. Lionel Richman
Richman & Garrett
1336 Wilshire Boulevard
Los Angeles, California 90017

Dear Mr. Richman:

This is in response to your request for an opinion on behalf of the Construction Laborers Vacation Trust for Southern California (Plan) regarding the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you ask whether the trustees of the Plan may honor (1) the process of any state judicial or administrative agency seeking to levy upon benefits due a beneficiary under the Plan, and (2) process from the U.S. Internal Revenue Service (IRS) directed to monies due a beneficiary under the Plan.

You advise that the Plan is created by a written agreement and declaration of trust pursuant to section 302 of the Labor Management Relations Act, 1947, as amended (LMRA). Under a collective bargaining agreement, employers are obligated to pay to the Plan a fixed sum per hour for each hour worked on behalf of each employee covered by the collective bargaining agreement. The contributions are added to the employee's pay for the purpose of calculating appropriate taxes and then are deducted and transmitted to the Plan. The Plan holds the funds for annual distribution. The State of California, acting through the State Board of Equalization, has served a "Notice to Withhold" for sales and use tax, under state law, upon the Plan, seeking to seize benefits due a particular beneficiary under the Plan. Prior to the effective date of ERISA, the Franchise Tax Board of the State of California made similar levies for state in-

come taxes and other state agencies made similar levies for unpaid unemployment insurance contributions due from beneficiaries who were formerly employers. From time to time, the U.S. Internal Revenue Service (IRS) also has made such levies.

You further advise that section 9.08 of the trust instrument reads as follows:

> "It is the intent and purpose of the Plan, and of this Agreement, and a material part of the consideration for the making of contributions to the Fund by individual employers, that the money in each vacation account shall be received by the employee entitled thereto personally. Accordingly, no payments due the Fund and no monies in vacation accounts established pursuant to the Plan shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge by any employee or other persons and any such anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge shall be void and ineffective. The money credited to a vacation account shall be subject to withdrawal and distribution only at the times, in the manner and for the purposes specified in this Agreement."

We assume that in using the word "beneficiary" in your letter you mean a "participant" or "beneficiary" as these terms are defined by ERISA sections 3(7) and (8).

Section 403(c)(1) of ERISA provides, as here relevant, that "the assets of a plan . . . shall be held for the exclusive purposes of providing benefits to participants in the plan and their beneficiaries and defraying reasonable expenses of administering the plan." Similarly, section 404(a)(1) of ERISA provides, in part, that:

> . . . a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and —

(A) for the exclusive purpose of:

(i) providing benefits to participants and their beneficiaries; and

(ii) defraying reasonable expenses of administering the plan; . . . and

(D) in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of this title.

Section 514 of ERISA provides, in part, as follows:

(a) Except as provided in subsection (b) of this section, the provisions of this title and title IV shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 4(a) and not exempt under section 4(b). This section shall take effect January 1, 1975. . . .

(c) For purposes of this section:

(1) The term "State law" includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any State. A law of the United States applicable only to the District of Columbia shall be treated as a State law rather than a law of the United States.

(2) The term "State" includes a State, any political subdivisions thereof, or any agency or instrumentality of either, which purports to regulate, directly or indirectly, the terms and conditions of employee benefit plans covered by this title.

(d) Nothing in this title shall be construed to alter, amend, modify, invalidate, impair, or supersede any law of the United States (except as provided in sections 111 and 507(b)) or any rule or regulation issued under any such law.

Section 514(a) established a broad preemption of all state laws insofar as they may relate to any employee benefit plan

covered by title I of ERISA. The reasons for broad preemption of state laws under ERISA were succinctly stated by Senator Javits, a major sponsor and floor manager of the bill, during its final consideration as follows:

> Both the House and Senate bills provided for preemption of State Law, but—with one major exception appearing in the House bill—defined the perimeters of preemption in relation to the areas regulated by the bill. Such a formulation raised the possibility of endless litigation over the validity of State action that might impinge on Federal regulation, as well as opening the door to multiple and potentially conflicting State laws hastily contrived to deal with some particular aspect of private welfare or pension plans not clearly connected to the Federal regulatory scheme.
>
> Although the desirability of further regulation—at either the State or Federal level—undoubtedly warrants further attention, on balance, the emergence of a comprehensive and pervasive Federal interest and the interests of uniformity with respect to interstate plans required—but for certain exceptions—the displacement of State action in the field of private employee benefit programs. 120 Cong. Rec. S15751 (daily ed. Aug. 22, 1974).

Based on the above, it is the position of the Department of Labor that the process of any state judicial or administrative agency seeking to levy for unpaid taxes or unpaid unemployment insurance contributions upon benefits due a participant or beneficiary under the Plan is pre-empted under ERISA section 514.

With regard to process from the IRS, section 514(d) of ERISA provides that no provision should be construed in such a way as to affect any other Federal law or any rule or regulation issued under that law. Section 6334(c) of the Internal Revenue Code of 1954, which was in effect before

the enactment of ERISA, provides that notwithstanding any other law of the United States, no property or right to property is exempt from a Federal tax levy other than certain property which is specifically made exempt under section 6334(a). The specific exemptions set forth in section 6334(a) do not include the type of benefits with which you are concerned. Therefore, it is the view of the Department that the trustees of the Plan may honor such IRS tax levies and, pursuant to ERISA section 514(d), not be in violation of ERISA sections 403(c)(1) and 404(a)(1).

It should be noted that no opinion is expressed herein as to any application of section 302 of the LMRA.

This letter constitutes an advisory opinion under ERISA Procedure 76-1 (copy enclosed). Accordingly, this letter is issued subject to the provisions of the procedure, including section 10 relating to the effect of advisory opinions.

Sincerely,

/s/ Ian D. Lanoff
Ian D. Lanoff
Administrator
of Pension and Welfare
Benefit Programs

Enclosure

cc: Mr. George M. Cox
Cox, Castle, Nicholson & Weekes
2049 Century Park East, 28th Floor
Los Angeles, California 90067

FEDERAL SUPPLEMENTAL BENEFITS (EMERGENCY UNEMPLOYMENT COMPENSATION)

Ending of Federal Supplemental Benefit Period in Montana

This notice announces the ending of the Federal Supplemental Benefit Period in the State of Montana effective August 28, 1976.

BACKGROUND

The Emergency Unemployment Compensation Act of 1974 (Pub. L. 93-572, enacted December 31, 1974) (the Act) created a temporary program of supplementary unemployment benefits (referred to as Federal Supplemental Benefits) for unemployed individuals who have exhausted their rights to regular and extended benefits under State and Federal unemployment compensation laws. Federal Supplemental Benefits are payable during a Federal Supplemental Benefit Period in a State which has entered into an Agreement under the Act with the United States Secretary of Labor. A Federal Supplemental Benefit Period is triggered on in a State when unemployment in the State or in the State and the nation reaches the high levels set in the Act. During a Federal Supplemental Benefit Period the maximum amount of Federal Supplemental Benefits which are payable to eligible individuals is up to 13 weeks or 26 weeks, depending upon the level of the rate of insured unemployment in the State. A Federal Supplemental Benefit Period commenced in the State of Montana on January 26, 1975.

The Act also provides that a Federal Supplemental Benefit Period in a State will trigger off when the rate of insured unemployment in the State averages less than 5.0 percent over a period of thirteen consecutive calendar weeks. The benefit period actually terminates at the end of the third

week after the week for which there is an "off" indicator, if the benefit period will have been in effect for a minimum duration of 26 weeks.

DETERMINATION OF "OFF" INDICATOR

The employment security agency of the State of Montana has determined under the Act and 20 CFR 618.19(b) (published in the Federal Register on March 23, 1976, at 41 FR 12151, 12157) that the average rate of insured unemployment in the State for the period consisting of the week ending on August 7, 1976, and the immediately preceding twelve weeks, was less than 5.0 percent.

Therefore, I have determined in accordance with the Act and 20 CFR 618.19(b), and as authorized by the Secretary of Labor's Order 4-75, dated April 16, 1975 (published in the Federal Register on April 28, 1975, at 40 FR 18515), that there was a Federal Supplemental Benefit "off" indicator in the State of Montana for the week ending on August 7, 1976, and that the Federal Supplemental Benefit Period in that State terminates on August 28, 1976.

INFORMATION FOR CLAIMANTS

Any individual whom Federal Supplemental Benefits or Federal-State Extended Benefits were payable in the State (whether or not any payment actually was made), for any portion of the last week of the Federal Supplemental Benefit Period, will have an additional eligibility period beinning immediately following the end of the Federal Supplemental Benefit Period. During the additional eligibility period the individual will be entitled to Federal Supplemental Benefits to the same extent as if the Federal Supplemental Benefit Period continued to be in effect. The additional eligibility period will have a duration of 13 weeks, unless it is terminated sooner by reason of the beginning of a new Federal Supplemental Benefit Period in the State.

Individuals currently filing claims for Federal Supplemental Benefits will receive written notices from the Montana Division of Employment Security, Department of Labor, of the end of the Federal Supplemental Benefit Period in that State and its effect on their entitlement to Federal Supplemental Benefits. The notice to any individual who will have an additional eligibility period following the Federal Supplemental Benefit Period will include information concerning potential entitlement to Federal Supplemental Benefits during the additional eligibility period.

Although the Federal Supplemental Benefit Period has terminated, an Extended Benefit Period will continue in effect in the State due to the National "on" indicator for the Federal-State Extended Benefit Program, as announced in a notice published in the Federal Register on February 21, 1975, at 40 FR 4722. Therefore, Federal-State Extended Benefits will continue to be payable to eligible individuals in the State.

Persons who wish information about their rights to Federal Supplemental Benefits or Federal-State Extended Benefits in the State of Montana should contact the nearest Employment Service Office of the Montana Employment Security Division in their locality.

Signed at Washington, D.C., on August 23, 1976.

WILLIAM H. HOLBERG,
Assistant Secretary for
Employment and Training.

[*FR Doc. 76-25242 Filed 8-26-76; 8:45 am*]

Office of Employee Benefits Security

EMPLOYEE BENEFIT PLANS

Advisory Opinion Procedure

It is the practice of the Department of Labor (the Department) to answer inquiries of individuals or organizations affected, directly or indirectly, by the Employee Retirement Income Security Act of 1974 (Pub. L. 93-406, hereinafter "the Act") as to their status under the Act and as to the effect of certain acts and transactions. The answers to such inquiries are categorized as "information letters" and "advisory opinions." This "ERISA Procedure" (ERISA Proc. 76-1) describes the general procedures of the Department in issuing information letters and advisory opinions under the Act, and is designed to promote efficient handling of inquiries and to facilitate prompt responses.

Section 7 of this procedure (instructions to individuals and organizations requesting advisory opinions relating to prohibited transactions and common definitions) is reserved. This section will set forth the procedure to be followed to obtain an advisory opinion relating to prohibited transactions and common definitions, such as whether a person is a party in interest and a disqualified person. In general, this section will incorporate a revenue procedure to be published by the Internal Revenue Service.

This advisory opinion procedure consists of rules of agency procedure and practice, and is therefore excepted under 5 U.S.C. 552(b)(3)(A) of the Administrative Procedure Act from the ordinary notice and comment provisions for agency rulemaking. Accordingly, the procedure is effective August 27, 1976.

Section 1. *Purpose*. The purpose of this ERISA Procedure is to describe the general procedures of the Department of Labor (the Department) in issuing information let-

ters and advisory opinions to individuals and organizations under the Employee Retirement Income Security Act of 1974 (Pub. L. 93-406), hereinafter referred to as "the Act". This ERISA Procedure also informs individuals and organizations, and their authorized representatives, where they may direct requests for information letters and advisory opinions, and outlines procedures to be followed in order to promote efficient handling of their inquiries.

Sec. 2. *General practice*. It is the practice of the Department to answer inquiries of individuals and organizations, whenever appropriate, and in the interest of sound administration of the Act, as to their status under the Act and as to the effects of their acts or transactions. One of the functions of the Department is to issue information letters and advisory opinions in such matters.

Sec. 3. *Definitions*. .01 An "information letter" is a written statement issued either by the Pension and Welfare Benefit Programs (Office of Employee Benefits Security), U.S. Department of Labor, Washington, D.C. or a Regional Office or an Area Office of the Labor-Management Services Administration, U.S. Department of Labor, that does no more than call attention to a well-established interpretation or principle of the Act, without applying it to a specific factual situation. An information letter may be issued to any individual or organization when the nature of the request from the individual or the organization suggests that it is seeking general information, or where the request does not meet all the requirements of section 6 or 7 of this procedure, and it is believed that such general information will assist the individual or organization.

.02 An "advisory opinion" is a written statement issued to an individual or organization, or to the authorized representative of such individual or organization, by the Administrator of Pension and Welfare Benefit Programs or his

delegate, that interprets and applies the Act to a specific factual situation. Advisory opinions are issued only by the Administrator of Pension and Welfare Benefit Programs or his delegate.

.03 Individuals and organizations are those persons described in section 4 of this procedure.

Sec. 4. *Individuals and organizations who may request advisory opinions or information letters*. .01 Any individual or organization affected directly or indirectly, by the Act may request an information letter or an advisory opinion from the Department.

.02 A request by or for an individual or organization must be signed by the individual or organization, or by the authorized representative of such individual or organization. See section 7.03 of this procedure.

Sec. 5. *Discretionary Authority to Render Advisory Opinions*. .01 The Department will issue advisory opinions involving the interpretation of one or more sections of the act, regulations promulgated under the Act, Interpretive bulletins, or exemptions issued by the Department to a specific factual situation. Generally, advisory opinions will be issued by the Department only with respect to prospective transactions (i.e., a transaction which will be entered into). Moreover, there are certain areas where, because of the inherently factual nature of the problem involved, or because the subject of the request for opinion is under investigation for a violation of the Act, the Department ordinarily will not issue advisory opinions. Generally, an advisory opinion will not be issued on alternative courses of proposed transactions, or on hypothetical situations, or where all parties involved are not sufficiently identified and described, or where material facts, or details of the transaction are omitted.

.02 The Department ordinarily will not issue advisory opinions relating to the following sections of the Act:

.02(a) Section 3(18), relating to whether certain consideration constitutes adequate consideration;

.02(b) Section 3(26), relating to whether the valuation of any asset is at present value;

.02(c) Section 3(27), relating to whether the valuation of any asset is at present value;

.02(d) Section 102(a)(1), relating to whether a summary plan description is written in a manner calculated to be understood by the average participant.

.02(e) Section 103(a)(3)(A), relating to whether the financial statements and schedules required to be included in the Annual Report are presented fairly in conformity with generally accepted accounting principles applied on a consistent basis;

.02(f) Section 103(b)(1), relating to whether a matter must be included in a financial statement in order to fully and fairly present the financial statement of the plan;

.02(g) Section 202 (other than section 202(a)(3) and (b) (1)) relating to minimum participation standards;

.02(h) Section 203 (other than sections 202(a)(3)(B), (b)(1) (flush language), (b)(2), (b)(3)(A);

.02(i) Section 204 of the Act (other than sections 204 (b)(1)(B), (b)(1)(A), (C), (D), (E)), relating to benefit accrual requirements;

.02(j) Section 205(e), relating to the period during which a participant may elect in writing not to receive a joint and survivor annuity;

.02(k) Section 208, relating to mergers and consolidation of plans or transfer of plan assets;

.02(l) Section 209(a)(1), relating to whether the report required by section 209(a)(1) is sufficient to inform the employee of his accrued benefits under the plan, etc.

.02(m) Sections 302 through 305, relating to minimum funding standards;

.02(n) Section 403(c)(1), relating to the purposes for which plan assets must be held;

.02(o) Section 404(a), relating to fiduciary duties as applied to particular conduct; and,

.02(p) Section 407(a) (2) and (3) and (c)(1), relating to fair market value, as applied to whether the value of any particular security or real property constitutes fair market value.

This list is not all inclusive and the Department may decline to issue advisory opinions relating to other sections of the Act whenever warranted by the facts and circumstances of a particular case. The Department may, when it is deemed appropriate and in the best interest of sound administration of the Act, issue information letters calling attention to established principles under the Act, even though the request that was submitted was for an advisory opinion.

.03 Pending the adoption of regulations (either temporary or final) involving the interpretation of the application of a provision of the Act, consideration will be given to the issuance of advisory opinions relating to such provisions of the Act only under the following conditions:

.03(a) If an inquiry presents an issue on which the answer seems to be clear from the application of the provisions of the Act to the facts described, the advisory opinion will be issued in accordance with the procedures contained herein.

.03(b) If an inquiry presents an issue on which the answer seems reasonably certain but not entirely free from

doubt, an advisory opinion will be issued only if it is established to the satisfaction of the Department, that a business emergency requires an advisory opinion or that unusual hardship to the plan or its participants and beneficiaries will result from failure to obtain an advisory opinion. In any case in which the individual or organization believes that a business emergency exists or that an unusual hardship to the plan or its participants and beneficiaries will result from the failure to obtain an advisory opinion the individual or organization should submit with the request a separate letter setting forth the facts necessary for the Department to make a determination in this regard. In this connection the Department will not deem a "business emergency" to result from circumstances within the control of the individual or organization such as, for example scheduling within an inordinately short time the closing date of a transaction or a meeting of the Board of Directors of the shareholders of a corporation.

.03(c) If an inquiry presents an issue that cannot be reasonably resolved prior to the issuance of a regulation, an advisory opinion will not be issued.

.04 The Department ordinarily will not issue advisory opinions on the form or effect in operation of a plan, fund, or program (or a particular provision or provisions thereof) subject to Title I of the Act. For example, the Department will not issue an advisory opinion on whether a plan satisfies the requirements of Parts 2 and 3 of Title I of the Act.

Sec. 6. *Instructions to individuals and organizations requesting advisory opinions from the Department.* .01 If an advisory opinion is desired, a request should be submitted to: Advisory Opinion, Office of Regulatory Standards and Exceptions, Pension and Welfare Benefit Programs, U.S. Department of Labor, Washington, D.C. 20216.

.02 A request for an advisory opinion must contain the following information:

.02(a) The name and type of plan or plans (e.g., pension, profit-sharing, or welfare plan); the Employer Identification Number (EIN); the Plan Number (PN) used by the plan in reporting to the Department of Labor on Form EBS-1; or a copy of the first two pages of the most recent Form EBS-1 filed with the Department.

.02(b) A detailed description of the act or acts or transaction or transactions with respect to which an advisory opinion is requested. Where the request pertains to only one step of a larger integrated act or transaction, the facts, circumstances, etc., must be submitted with respect to the entire transaction. In addition, a copy of all documents submitted must be included in the individual's or organization's statement and not merely incorporated by reference, and must be accompanied by an analysis of their bearing on the issue or issues, specifying the pertinent provisions.

.02(c) A discussion of the issue or issues presented by the act or acts or transaction or transactions which should be addressed in the advisory opinion.

.02(d) If the individual or organization is requesting a particular advisory opinion, the requesting party must furnish an explanation of the grounds for the request together with a statement of relevant supporting authority. Even though the individual or organization is urging no particular determination with regard to a proposed or prospective act or acts or transaction or transactions, the party requesting the ruling must state such party's views as to the results of the proposed act or acts or transaction or transactions and furnish a statement of relevant authority to support such views.

.03 A request for an advisory opinion by or for an individual or organization must be signed by the individual or organization or by the individual's or organization's authorized representative. If the request is signed by a representative of an individual or organization, or the representative may appear before the Department in connection with the request, the request must include a statement that the representative is authorized to represent the individual or organization.

.04 A request for an advisory opinion that does not comply with all the provisions of this procedure will be acknowledged, and the requirements that have not been met will be noted. Alternatively, at the discretion of the Department, the Department will issue an information letter to the individual or organization.

.05 If the individual or organization, or the authorized representative, desires a conference in the event the Department contemplates issuing an adverse advisory opinion, such desire should be stated in writing when filing the request or soon thereafter in order that the Department may evaluate whether in the sole discretion of the Department, a conference should be arranged and at what stage of the consideration a conference would be most helpful.

.06 It is the practice of the Department to process requests for information letters and advisory opinions in regular order and as expeditiously as possible. Compliance with a request for consideration of a particular matter ahead of its regular order, or by a specified time, tends to delay the disposition of other matters. Requests for processing ahead of the regular order, made in writing (submitted with the request or subsequent thereto) and showing clear need for such treatment, will be given consideration as the particular circumstances warrant. However, no assurance can be given that any letter will be processed by the time requested. The

Department will not consider a need for expedited handling to arise if the request shows such need has resulted from circumstances within the control of the person making the request.

.07 An individual or organization, or the authorized representative desiring to obtain information relating to the status of his or her request for an advisory opinion may do so by contacting the Office of Regulatory Standards and Exceptions, Pension and Welfare Benefit Programs, U.S. Department of Labor, Washington, D.C.

Sec. 7. *Instructions to individuals and organizations requesting advisory opinions relating to prohibited transactions and common definitions.* .01 [Reserved]

.02 [Reserved]

.03 [Reserved]

Sec. 8. *Conferences at the Department of Labor.* If a conference has been requested, and the Department determines that a conference is necessary or appropriate, the individual or organization or the authorized representative will be notified of the time and place of the conference. A conference will normally be scheduled only when the Department in its sole discretion deems it will be necessary or appropriate in deciding the case. If conferences are being arranged with respect to more than one request for an opinion letter involving the same individual or organization, they will be so scheduled as to cause the least inconvenience to the individual or organization.

Sec. 9. *Withdrawal of requests.* The individual or organization's request for an advisory opinion may be withdrawn at any time prior to receipt of notice that the Department intends to issue an adverse opinion, or the issuance of an opinion. Even though a request is withdrawn, all correspondence and exhibits will be retained by the

Department and will not be returned to the individual or organization.

Sec. 10. *Effect of Advisory Opinion*. An advisory opinion is an opinion of the Department as to the application of one or more sections of the Act, regulations promulgated under the Act, interpretive bulletins, or exemptions. The opinion assumes that all material facts and representations set forth in the request are accurate, and applies only to the situation described therein. Only the parties described in the request for opinion may rely on the opinion, and they may rely on the opinion only to the extent that the request fully and accurately contains all the material facts and representations necessary to issuance of the opinion and the situation conforms to the situation described in the request for opinion.

Sec. 11. *Effect of Information Letters*. An information letter issued by the Department is informational only and is not binding on the Department with respect to any particular factual situation.

Sec. 12. *Public inspection*. .01 Advisory opinions shall be open to public inspection at the Public Disclosure Room, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

.02 Background files (including the request for an advisory opinion, correspondence between the Department and the individual or organization requesting the advisory opinion) shall be available upon written request. Background files may be destroyed after three years from the date of issuance.

.03 Advisory opinions will be modified to delete references to proprietary information prior to disclosure. Any information considered to be proprietary should be so specified in a separate letter at the time of request. Other than

proprietary information, all materials contained in the public files shall be available for inspection pursuant to section 12.02.

.04 The cost of search, copying and deletion of any references to proprietary information will be borne by the person requesting the advisory opinion or the background file.

Sec. 13. *Effective date.* This procedure is effective August 27, 1976, the date of its publication in the Federal Register.

Signed at Washington, D.C., this 24th day of August 1976.

JAMES D. HUTCHINSON,
Administrator of Pension and
Welfare Benefit Programs,
U.S. Department of Labor.

[*FR Doc. 76-25168 Filed 8-26-76; 8:45 am*]

* * *

Petition for Removal.

United States District Court, Central District of California.

Franchise Tax Board of the State of California, Plaintiff, vs. Construction Laborers Vacation Trust for Southern California, Edward Ashton, Al Atwood, Gary Bronneck, John Clarke, R. C. Gallyon, Richard Greenberg, Roger Jaska, William Middleton, Louie Bravo, Benjamin T. James, George Mattocks, William R. McClain, Nick Orsura, Joe Rivera, Ray M. Wilson, James Keyes, as Trustees and on behalf of Construction Does I to XXX, Inclusive, Defendants. No. 80 02741.

Filed: June 25, 1980.

TO THE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA:

The Petition of Defendants respectfully shows:

1. On June 13, 1980, an action was commenced against Petitioners in the Superior Court of the State of California, for the County of Los Angeles, entitled, "FRANCHISE TAX BOARD OF THE STATE OF CALIFORNIA, Plaintiff, v. CONSTRUCTION LABORERS VACATION TRUST FOR SOUTHERN CALIFORNIA, EDWARD ASHTON, AL ATWOOD, GARY BRONNECK, JOHN CLARKE, R. C. GALLYON, RICHARD GREENBERG, ROGER JASKA, WILLIAM MIDDLETON, LOUIS BRAVO, BENJAMIN T. JAMES, GEORGE MATTOCKS, WILLIAM R. McCLAIN, NICK ORSURA, JOE RIVERA, RAY M. WILSON, JAMES KEYES, as trustees and on behalf of Construction Laborers Vacation Trust For Southern California, DOES I to XXX, Inclusive, Defendants", being Case No. C 326040, of the files and records of said

Court, by the filing of a Complaint and the issuance of a Summons thereon.

2. A copy of the Complaint and Summons thereon, attached hereto as Exhibit "A", and incorporated herein by reference, was served upon Defendants, other than the fictitious Defendants, on June 18, 1980. Defendants, Does I to XXX, Inclusive, are nominal Defendants. No further pleadings have been filed herein. No process has been served on any other Defendant.

3. The above-described action is a civil action involving an employee benefit plan and is an action over which this court has original jurisdiction under §403(c)(1) and §514 of the Employee Retirement Income Security Act of 1974, (29 U.S.C. 1103, 1104 and 1144.) This is action is properly removed to this Court by Petitioners, pursuant to the provisions of 28 U.S.C. §1441 without regard to the citizenship or residence of the parties.

4. This Petition is filed within thirty (30) days after Petitioners received copies of the Summons and Complaint, as required by 29 U.S.C. §1446(b).

5. Petitioners file herewith a Bond with good and sufficient surety, conditioned as provided by 28 U.S.C. 1446(d), that it will pay all costs and disbursements incurred by reason of the removal of the proceeding hereby brought, should it be determined that the action is not removable or is improperly removed.

WHEREFORE, Petitioners pray that the above action now pending against them in the Superior Court of the State of California, for the County of Los Angeles, be removed therefrom to this Honorable Court.

Dated this 20th day of June, 1980.

RICHMAN & GARRETT and
COX, CASTLE & NICHOLSON
By: /s/ Lionel Richman
LIONEL RICHMAN
Attorneys for Petitioners/Defendants

Civil Cover Sheet.

Plaintiffs

Franchise Tax Board of the State of California.

Attorneys (firm name, address, and telephone number)

George Deukmejian, Attorney General
Patti S. Kitching, Deputy Attorney General
3580 Wilshire Boulevard
Los Angeles, CA 90010
(213) 736-2104.

Defendants

Construction Laborers Vacation Trust for Southern California, Edward Ashton, Al Atwood, Gary Bronneck, John Clarke, R. C. Gallyon, Richard Greenberg, Roger Jaska, William Middleton, Louie Bravo, Benjamin T. James, George Mattocks, William R. McClain, Nick Orsura, Joe Rivera, Ray M. Wilson, James Keyes, as Trustees and on behalf of Construction Does I to XXX, Inclusive.

Attorneys (if known)

Lionel Richman of
Richman & Garrett
1336 Wilshire Boulevard
Los Angeles, CA 90017
(213) 483-7400

Basis of Jurisdiction.

Federal Question
(U.S. not a party)

CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause)

Removal from State Court to U.S. District Court under Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001, et seq.

* * *

Memorandum of Points and Authorities in Opposition to Motion to Remand.

United States District Court, Central District of California.

Franchise Tax Board of the State of California, Plaintiff, vs. Construction Laborers Vacation Trust for Southern California, Edward Ashton, Al Atwood, Gary Bronneck, John Clarke, R. C. Gallyon, Richard Greenberg, Roger Jaska, William Middleton, Louie Bravo, Benjamin T. James, George Mattocks, William R. McClain, Nick Orsura, Joe Rivera, Ray M. Wilson, James Keyes, as Trustees and on behalf of Construction Does I to XXX, Inclusive, Defendants. Case No. 80-02741-R.

Date: October 6, 1980.

Time: 10:00 A.M.

Filed: September 26, 1980.

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I

INTRODUCTION

This is an action filed by the Franchise Tax Board of the State of California ("the Board") against the Construction Laborers Vacation Trust for Southern California ("the Trust") and its individual Trustees ("the Trustees").

The Trust is an express trust created pursuant to the provisions of a collective bargaining agreement entered into by the Southern California District Council of Laborers and four employers associations. Employers bound to collective bargaining agreements with the Southern California District Council of Laborers are required to pay specified sums into the Trust, for each hour worked by covered employees. These sums are accumulated in the accounts of individual employees, and are disbursed periodically by the Trustees pursuant to the provisions of a plan contained in the Trust Agreement. (Complaint, Exhibit A, Sections 1.01, 1.02, 6.02, 9.01 and 9.02.) The Trust Agreement contains "spendthrift" provisions which preclude the disbursal of accumulated contributions except in accordance with the terms of the Plan: "The money credited to a vacation account shall be subject to withdrawal and distribution only

at the times, in the manner and for the purposes specified in this Agreement." (Trust Agreement, Section 9.08.)

The suit filed by the Board alleges that three individuals (Murphy, Salcedo, and Zarate) are indebted to the State of California for personal income taxes. Each of the three individuals is alleged to be a beneficiary of the Trust, and the Board has attempted to satisfy their respective tax liabilities by filing Notices to Withhold with the Trust (pursuant to California Revenue and Taxation Code §18817) directing the Trustees to withhold and transmit to the Board any funds being held for the benefit of these individuals, up to the maximum amount of their State Income Tax liability.

* * *

The complaint alleges that in each instance, the Board has been notified that defendants "would not disburse the funds levied upon to either [Murphy, Salcedo or Zarate] or to the Board pending the receipt of an opinion letter from the Administrator, Pension and Welfare Benefit Programs, United States Department of Labor, as to whether defendants are permitted to honor said liens under the provisions of the Employee Retirement Income Security Act of 1974 (hereinafter "ERISA")." [Complaint, Paragraphs 9, 11 and 14.]

The complaint further alleges that on January 7, 1980, the defendants notified the Board that "the defendants would not honor the levies made upon them by the State of California pursuant to an advisory opinion from the United States Department of Labor." [Complaint, Paragraph 15.] The advisory opinion from the United States Department of Labor is attached as Exhibit H to the complaint. Its contents are extensively discussed in the Motion to Dismiss being heard concurrently with this motion. In

brief, the advisory opinion holds that the assets of the Trust are exempt from execution under the process of any state judicial or administrative agency because of the preemption provisions of ERISA.

The Board's complaint, in its second cause of action, seeks a declaratory judgment, stating the position of the parties to be as follows: "There was at the time of the levies alleged above and continues to be an actual controversy between the parties concerning their respective legal rights and duties. The Board contends that defendants are obligated and required by law to pay over to the Board all amounts held in the Construction Laborers Vacation Trust for Southern California in favor of the Board's delinquent taxpayers. On the other hand, defendants contend that Section 514 of ERISA preempts state law and that the Trustees lack the power to honor the levies made upon them by the State of California." [Complaint, Paragraph 19.]

The prayer of the Board's complaint requests "that the court declare defendants legally obligated to honor all future levies by the Board upon defendant Trust Fund in collection of tax delinquencies of the beneficiaries of defendant Trust Fund." [Complaint, Page 9, Lines 1-4.]

This action was originally filed in the Superior Court of the State of California for the County of Los Angeles. On June 26, 1980, the defendants caused this action to be removed to the United States District Court for the Central District of California.

The Petition for Removal filed with this court states that "the above described action is a civil action involving an employee benefit plan and is an action over which this court has original jurisdiction under Section 403(c)(1) and Section 514 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1103, 1104 and 1144). This action is

properly removed to this court by petitioners, pursuant to the provisions of 28 U.S.C. §1441 without regard to the citizenship or residence of the parties."

The plaintiff has now brought a Motion to Remand this action to State court, asserting an absence of jurisdiction in this court to hear the case.

For the reasons set forth below, the defendants oppose the Motion to Remand.

II

THIS ACTION IS ONE OVER WHICH THE FEDERAL COURTS HAVE ORIGINAL JURISDICTION, BECAUSE IT INVOLVES A CLAIM OR RIGHT "ARISING UNDER" THE LAWS OF THE UNITED STATES.

Any civil action of which the Federal District Courts would have original jurisdiction "founded on a claim or right arising under the Constitution, treaties or laws of the United States" is properly removable to U. S. District Court, if filed in a state court. 28 U.S.C. §1441(b).

The question of what types of cases "arise under" the laws of the United States is a troublesome one, which has generated much litigation over the years.

It is true, as the Board notes in its Motion, that the jurisdictional basis for the claim must be established by reference solely to the complaint. *Skelly Oil Co. vs. Phillips Petroleum Co.* (1950), 339 U.S. 667, 673-674; *Gully vs. First National Bank* (1936), 299 U.S. 109, 113; *Wong vs. Bacon* (N.D. Cal. 1977), 445 F. Supp. 1177, 1182.

In this case, as discussed above, the Board has made detailed and explicit reference to the provisions of ERISA in the allegations of the complaint, and the exhibits attached to the complaint. It is quite clear, from the contents of the complaint, that the entire focus of the dispute between the

parties is on whether ERISA preempts the Board's right to levy upon assets of the Trust.

Moreover, Ninth Circuit cases have held that it is no longer essential that the plaintiff make explicit reference to the provisions of federal law which are at issue, if it is clear from the contents of the complaint that a federal question exists. In *Sheeran vs. General Electric Co.*, 593 F. 2d 93 (9th Cir. 1979) the court sustained the removal to federal court of an action seeking increased pension benefits under the provisions of a collectively bargained pension agreement. After noting that federal jurisdiction would properly exist under Section 301(a) of the Taft Hartley Act for any suit for violation of a collective bargaining agreement, the court went on to hold that removal jurisdiction was not defeated by the failure of the plaintiff to make specific reference to Section 301(a) in its complaint.

Similarly, in *Fristoe vs. Reynolds Metals Company*, 615 F. 2d 1209 (9th Cir. 1980), the court upheld removal of a suit against an employer and a labor union, alleging various violations of common law rights. The court found that the characterization of plaintiff's rights set forth in his complaint was not controlling:

> "Fristoe contends his original state court complaint did not confer federal subject matter jurisdiction. Although he had not mentioned LMRA Section 301 in the complaint, and stylized his causes of action in common law terms, the court questioned him carefully to determine the nature of his claims. It is apparent from the allegations in his complaint and his responses to the court's questions that Fristoe was alleging that Reynolds wrongfully discharged him in breach of the collective bargaining agreement and that the union improperly handled his grievance. ***Mere omission of reference to LMRA Section 301 in the complaint does not***

> *preclude federal subject matter jurisdiction. The court's recharacterization of Fristoe's complaint as one arising under Section 301 is required by federal preemption doctrines.*" [Emphasis added]

It is abundantly clear, from the allegations quoted in Part I above, that the Board has raised the issue of whether ERISA preempts state law adequately in its complaint.

The Board's second contention is that federal question jurisdiction does not exist because the *remedy* invoked by the Board is conferred by state law (specifically, the California Revenue and Taxation Code).

However, it is now well settled that the controlling question is not whether the *remedy* is federally provided, but whether the determinative issues in the case necessarily require interpretation of federal law.

The U. S. Supreme Court has explicitly rejected the proposition that the "cause of action" must be one arising under federal law:

> "Although it has sometimes been suggested that the 'cause of action' must derive from federal law, it has been found sufficient that some aspect of federal law is essential to plaintiff's success. The litigation-provoking problem has been the degree to which federal law must be in the forefront of the case and not be remote, collateral or peripheral." *Association of Westinghouse Salaried Employees vs. Westinghouse Electrical Corporation*, 75 S. Ct. 489, 495, 348 U.S. 437, 450 (1955). (Plurality opinion of Frankfurter, J.)

The same approach was taken by the Second Circuit in *T. B. Harms Company vs. Eliscu*, 339 F. 2d 823 (2nd Cir. 1964).

In that case, the Second Circuit stated that "even though the claim is created by state law, a case may 'arise under' a law of the United States if the complaint discloses a need

for determining the meaning or application of such a law." 339 F. 2d at 827. That is exactly the posture of this case. The disposition of the Board's claim in this action will necessarily involve a determination of whether the provisions of ERISA, a complex and far reaching federal regulatory scheme, preclude the Board from levying upon the Trust's assets.

Similarly, in *Garrett vs. Time-D.C., Inc.*, 502 F. 2d 627 (9th Cir. 1974), the Ninth Circuit held that jurisdiction over a claim for prejudgment interest on shipping overcharges was properly cognizable by the federal courts, even though the explicit remedy sought rose under common law. The Ninth Circuit held that "it is enough that the statute provide the *source* of the right or duty claimed in the suit. See *Murphy vs. Colonial Federal Savings & Loan Association*, 388 F. 2d 609, 611, 615 (2nd Cir. 1967). To require more would establish an impossible and artificial line between statute and common law which nowhere in fact exists." 502 F. 2d at 630.

The modern cases have focused on the issue of whether interpretation of federal law would be determinative of the rights of the parties.

Thus, in *Gully vs. First National Bank* (1936), 299 U.S. 109, 112, it was held that federal question jurisdiction would exist when the right asserted was such that "it will be supported if the . . . laws of the United States are given one construction or effect, and defeated if they receive another."

This is clearly a case in which the right of the Board to levy tax assessments on the Trust "will be supported if the . . . laws of the United States are given one construction or effect, and defeated if they receive another." That, in fact, is the whole point of this lawsuit.

Other courts have adopted the so-called "pivotal question" formulation:

> "The Second Circuit has stated that the test of whether a complaint presents a federal question is 'whether the complaint is for a remedy expressly granted by an act of Congress or otherwise 'inferred' from federal law, or *whether a properly pleaded 'state created' claim itself presents a 'pivotal question of federal law,' for example because an act of Congress must be construed . . .*" *Ivy Broadcasting Co. vs. American Tel & Tel*, 391 F. 2d 486, 489 (2nd Cir. 1968). [Emphasis supplied]

The same test was adopted by the Third Circuit in *Warrington Sewer Company vs. Tracy*, 463 F. 2d 771 (3rd Cir. 1972).

The Board's next contention is that the application of ERISA to the facts of this case is purely a matter of defense, which is not a proper ground for the invocation of federal jurisdiction.

However, even where the federal questions is primarily a matter of defense, the courts have held jurisdiction to be proper, if the defendant could have brought its own declaratory judgment action in federal court to construe the controlling federal statute:

> "It is plain that the federal law that gives rise to a federal question must be an element of the plaintiff's complaint. The well pleaded complaint rule precludes taking jurisdiction on the basis of an anticipated federal defense. *However, a suit for a declaratory judgment that defendant does not have a right under federal law, in circumstances in which a coercive action by the defendant based on his supposed federal law right would be cognizable in federal court, is now held to be within federal question jurisdiction.*" [Emphasis

supplied.] 13 Wright and Miller, *Federal Practice and Procedure*, Section 3562, p. 413.

In this action, it is quite clear that the Trust and its Trustees could have brought a suit in federal court, to obtain declaratory relief regarding the right of the Trust to be free from state tax liens. The suit is in its present posture solely due to the happenstance that the Board elected to bring suit first. Regardless of the party initiating the suit, the "pivotal question" for decision is the same: whether ERISA preempts the right of the State of California to levy upon Trust assets.

This issue was addressed by the Ninth Circuit in *Shareholders Management Co. vs. Fred F. Gregory*, 449 F. 2d 326 (9th Cir. 1971).

In the *Shareholders Management* case, this court dismissed an action in which shareholders and other parties sought declaratory relief to adjudicate the validity of a claimed federal defense to an action pending in state court in California. The Ninth Circuit reversed, directing the court to retain the case and stay further proceedings pending the outcome of the state litigation. The Ninth Circuit held that should the state court fail to adjudicate the federal defense, the shareholders should have a right to litigate the issue in federal court. The existence of the federal question raised by shareholders was held sufficient to sustain jurisdiction.

III

IN SUITS ARISING UNDER FEDERAL STATUTES REGULATING COMMERCE, INCLUDING ERISA, NO MINIMUM AMOUNT NEED BE IN DISPUTE TO SUSTAIN JURISDICTION.

Although it is not raised in the Board's Motion to Remand, it is important to note, in passing, that no serious issue can arise in this case regarding the sufficiency of the amount in dispute.

Although the Board's suit concerns three quite small tax delinquencies, the decision of the court will necessarily foreclose any legal question in the future regarding the right (or lack thereof) of the Board to levy on the Trust's assets. Thus, the actual amount at stake in this case is large indeed.

Although 28 U.S.C. §1331 requires that at least $10,000.00 be in dispute to sustain a claim for federal jurisdiction of a case "arising under" the Constitution or the laws of the United States, the minimum jurisdictional amount does not apply in any case arising "under any Act of Congress regulating commerce." 28 U.S.C. §1337.

This statutory provision has been interpreted in an extremely broad manner:

> "The courts have found in §1337 of the Code, and its predecessors, support for jurisdiction without an amount requirement in so many different kinds of suits that it seems fair to say that that section of the Code grants jurisdiction whenever suit is under an Act whose Constitutional basis is the commerce clause." Wright, *Federal Courts* (Third Edition), p. 124.

ERISA is clearly among the Acts of Congress which regulate commerce between the states. Moreover, it has been held that "to found jurisdiction upon Section 1337, it is not requisite that the commerce clause be the exclusive source of federal power; it suffices that it be a significant one." *Murphy vs. Colonial Federal Savings and Loan Association*, 388 F. 2d 609, 615 (2nd Cir. 1967).

Therefore, no serious claim can be made in this case that jurisdiction is lacking because of the absence of a claim for the requisite jurisdictional amount.

IV

THE COURT HAS THE POWER, IF NECESSARY, TO REALIGN THE CLAIMS OF THE PARTIES IN ORDER TO BRING THE FEDERAL ISSUE INTO PROPER FOCUS.

As already noted, the complaint filed by the Board herein adequately raises the federal question which is the focus of this litigation. We therefore believe there is no reason for the court to direct realignment of the parties to properly define the federal issues.

Nevertheless, it is noteworthy that one federal district court in California has ordered such a realignment in a case involving (as this one does) a trust fund created by collective bargaining and important issues of federal law arising under ERISA.

In *Wong vs. Bacon*, 445 F. Supp. 1177 (N.D. Cal. 1977) the court found that plaintiff's original complaint, seeking restitution of improper trust fund payments under California common law, did not adequately raise a federal issue, but that the answer of the defendant trustees raised important federal questions under ERISA. Rather than dismiss the action, the court elected to view the defendant's answer as a "counterclaim for a declaratory judgment against plaintiffs." Having realigned the parties in this fashion, the court found that the court-created "counterclaim" adequately raised a federal question and that jurisdiction was proper.

No such judicial legerdemain is necessary in this action. However, the *Wong* case is noteworthy because it emphasizes the lengths to which federal courts will go to retain jurisdiction over important federal questions involving interpretation of ERISA.

Public policy will be badly served if federal courts attempt to avoid interpreting critical issues of federal law in cases

such as this. The state courts are unequipped to deal, on a piecemeal basis, with the difficult and unresolved federal issues arising under complicated federal statutory schemes. To relegate such questions to the state courts may have the temporarily salutary effect of reducing the federal court workload, but the long-term result will be a patchwork of wildly inconsistent state court decisions on important federal statutory issues.

V

AN INDEPENDENT BASIS FOR JURISDICTION EXISTS UNDER THE LABOR MANAGEMENT RELATIONS ACT.

Section 301(a) of the Labor Management Relations Act of 1947 (the Taft-Hartley Act) provides as follows:

> "Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy and without regard to the citizenship of the parties."

The Ninth Circuit has held that trust agreements entered into as a result of collective bargaining are "contracts between an employer and a labor organization" within the meaning of Section 301(a), and that jurisdiction exists even if the employer and the labor organization are not parties to the suit:

> "Lillian's first response as at Section 301 is limited to suits between unions and employers and does not cover suits by beneficiaries of workers against the trustees or trust funds. This response is without merit. Section 301 jurisdiction is not dependent upon the parties to the suit but rather the nature or subject matter of the

> action. Jurisdiction exists as long as the suit is for violation of a contract between a union and employer *even if neither party is a union or an employer.*" [Emphasis supplied] *Rehmar vs. Smith*, 555 F. 2d 1362, 1366 (9th Cir. 1977).

In determining whether a suit is properly brought pursuant to the provisions of Section 301, the presence or absence of a specific reference to Section 301 in the complaint is not determinative. See *Fristoe vs. Reynolds Metals Company*, 615 F. 2d 1209 (9th Cir. 1980).

In this case, the Board seeks declaratory relief determining whether, consistent with the terms of the Trust Agreement (Exhibit A to the Complaint), the Trustees may be required to respond to state tax levies. The resolution of this issue will necessarily involve interpretation and application of the Trust Agreement created by the collective bargaining parties. This is precisely the type of adjudication which Section 301 encompasses.

Thus, even if the court were not confronted with the "pivotal" question of whether the Board's rights are preempted by ERISA, an adequate ground for the assertion of federal jurisdiction would nevertheless exist.

VI

CONCLUSION

For the reasons set forth herein, the Motion to Remand should be denied.

DATED: September 24, 1980

COX, CASTLE & NICHOLSON

By /s/ James P. Watson

James P. Watson,

Attorneys for Petitioners/Defendants

(Note — Proof of Service by Mail omitted in printing.)

Order Denying Motion to Remand.

United States District Court, Central District of California.

Franchise Tax Board of the State of California, Plaintiff, vs. Construction Laborers Vacation Trust for Southern California, et al., Defendants. Case No. 80-02741-R.

Filed: October 16, 1980.

The motion of plaintiff Franchise Tax Board of the State of California for an order remanding the within action to the Superior Court of the State of California for the County of Los Angeles came on for hearing in this court on Monday, October 6, 1980, at 10:00 A.M.

The court having reviewed the motion and documents filed in support thereof, and the written opposition thereto, and having heard the oral arguments of counsel, it is hereby ORDERED, that said motion be denied.

DATED: Oct. 16, 1980

[stamp] MANUEL L. REAL
Manuel L. Real, United States
District Judge

Supreme Court of the United States

No. 82-695

Franchise Tax Board of the State of California, Appellant, v. Construction Laborers Vacation Trust for Southern California, et al.

APPEAL from the United States Court of Appeals for the Ninth Circuit.

The statement of jurisdiction in this case having been submitted and considered by the Court, further consideration of the question of jurisdiction is postponed to the hearing of the case on the merits.

December 13, 1982